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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION - 2021)

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


**REPORT**

ON THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT)  
(NO.2) BILL, 2020 (NATIONAL ASSEMBLY BILL NO.50 OF 2020)

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DAY: Tues	
TABLED BY:	Chair, JLAC Hon. Mutui Kigano
CLERK-AT THE-TABLE:	Mages Lemuwa

## Contents

<b>LIST OF ANNEXURES.....</b>	<b>3</b>
<b>CHAIRPERSON FOREWORD.....</b>	<b>4</b>
<b>CHAPTER ONE.....</b>	<b>6</b>
1.0 PREFACE.....	6
1.2 Establishment and Mandate of the Committee .....	6
1.3 Committee Membership.....	7
1.4 Committee Secretariat.....	9
<b>CHAPTER TWO.....</b>	<b>10</b>
2.0 OVERVIEW OF THE BUSINESS LAWS (AMENDMENT) (NO.2) BILL, 2020 .....	10
2.1 ANALYSIS OF THE BILL .....	10
<b>CHAPTER THREE.....</b>	<b>12</b>
3.0 CONSIDERATION OF THE BILL .....	12
3.1 Departmental Committee on Justice and Legal Affairs .....	12
3.2 Departmental Committee on Labour and Social Welfare .....	12
3.3 Departmental Committee on Finance and National Planning.....	12
3.4 Departmental Committee on Health.....	12
3.5 Departmental Committee on Lands.....	12
3.6 Departmental Committee on Transport, Public Works and Housing.....	12
<b>CHAPTER FOUR .....</b>	<b>13</b>
4.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL.....	13
<b>CHAPTER FIVE .....</b>	<b>14</b>
5.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL.....	14
<b>CHAPTER SIX.....</b>	<b>48</b>
6.0 COMMITTEE RECOMMENDATION .....	48



## LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill and adoption of report.
- Annexure 2:** Adoption list.
- Annexure 3:** Copy of the newspaper advertisement inviting the public to present written submissions on the Bill.
- Annexure 4:** Copies of the submissions from stakeholders

## CHAIRPERSON FOREWORD

The Business Laws (Amendment) (No.2) Bill, 2020 (National Assembly Bill No.50 of 2020) was published in the *Kenya Gazette* of December 14, 2020 to effect various amendments to various Statutes. The Bill is sponsored by Leader of the Majority Party and proposes amendments to ten (10) statutes and was read a First Time on Tuesday, December 22, 2020. Thereafter, the Bill was committed to various Departmental Committees (DC's) for consideration in accordance with their respective mandates vide the Speaker's communication of Tuesday 9<sup>th</sup> February 2021

The Bill contains amendments seeking to amend the following laws: -

1. Law of Contract Act (Cap. 23).
2. Industrial Training Act (Cap. 237).
3. Stamp Duty Act (Cap. 480).
4. National Hospital Insurance Fund Act, 1998.
5. National Construction Authority Act, 2011.
6. Land Registration Act No. 3 of 2012.
7. National Social Security Fund Act, 2013.
8. Companies Act No. 17 of 2015.
9. Insolvency Act No. 18 of 2015; and.
10. Small Claim Courts Act, 2016.

The Report contains the proceedings of six (6) Departmental Committees of the National Assembly namely.

1. Justice and Legal Affairs
2. Labour and Social Welfare
3. Finance and National Planning
4. Health
5. Lands; and
6. Transport, Public Works and Housing.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) of the National Assembly, the DC on Justice and Legal Affairs through an advertisement in the local daily newspapers of 12<sup>th</sup> February 2021 invited the public to make representations on the Bill.

The Committees involved in consideration of the Bill received views from the following organizations:

1. Business Registration Service (Office of the Attorney-General and Department of Justice)
2. Ministry of East African Community and Regional Development
3. National Industrial Training Authority
4. National Social Security Fund (NSSF)
5. Nairobi Securities Exchange
6. Kenya Association of Stockbrokers
7. Investment Banks (KASIB)
8. Kenya Association of Stockbrokers
9. Ministry of Transport, Infrastructure, Housing Urban Development and Public Works
10. Engineers Board of Kenya
11. Ministry of Lands and Physical Planning; and the National Land Commission following the advertisement for public participation.

The Committee held one (1) sitting during which it considered the Bill clause by clause and unanimously adopted its report.

May I appreciate the Speaker and Clerk of the National Assembly for always providing guidance and direction to Committees in the discharge of their mandate, all the stakeholders and members of the public who took keen interest and participated in the scrutiny of the Bill and the Honourable members of the six (6) Departmental Committees for their devotion to duty which made consideration of the Bill successful.

Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

This report was compiled by the Departmental Committee on Justice and Legal Affairs on behalf of the other six (6) Departmental Committees and pursuant to the provisions of Standing Order 199 (6), it's my pleasant privilege and duty to present to the House a report of the Committee on the Business Laws (Amendment) (No.2) Bill, 2020 (National Assembly Bill No.50 of 2020).

**Hon. Muturi Kigano, M.P.**



## CHAPTER ONE

### 1.0 PREFACE

#### 1.2 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows;
  - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
  - (c) study and review all legislation referred to it;
  - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
  - (g) examine treaties, agreements and conventions;
  - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
  - (j) Examine any questions raised by Members on a matter within its mandate.
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows;
  - (a) Constitutional affairs;
  - (b) The administration of law and Justice
  - (c) The Judiciary;
  - (d) Public prosecutions;
  - (e) Elections;
  - (f) Ethics, integrity and anti-corruption; and
  - (g) Human rights.

### 1.3 Committee Membership

3. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017. The current membership is as follows-

#### Chairperson

Hon. Clement Muturi Kigano, M.P.  
Kangema Constituency

#### Jubilee Party

#### Vice Chairperson

Hon. (Dr.) Paul Otiende Amollo, M.P.  
Rarieda Constituency

#### Orange Democratic Movement (ODM)

Hon. Emmanuel Wangwe, M.P.  
Navakholo Constituency  
Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P.  
Suna East Constituency  
Orange Democratic Movement (ODM)

Hon. John Olago Aluoch, M.P.  
Kisumu West Constituency  
FORD-Kenya

Hon. George Peter Kaluma, M.P.  
Homa Bay Town Constituency  
Orange Democratic Movement (ODM)

Hon. Roselinda SoipanTuya, M.P.  
County  
Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P Narok  
Samburu West Constituency  
KANU-Kenya

Hon.W. Kamoti Mwamkale, M.P.  
Rabai Constituency  
Orange Democratic Movement (ODM)

Hon. Zuleikha Hassan, M.P.  
Kwale County  
Orange Democratic Movement (ODM)

Hon. Jennifer Shamalla, M.P.  
Nominated MP  
Jubilee Party

Hon. Adan Haji Yussuf, M.P.  
Mandera West Constituency  
Economic Freedom Party (EFP)

Hon. John MuneneWambugu, M.P.  
Kirinyaga Central  
Jubilee Party

Hon. George Gitonga Murugara, M.P.  
Tharaka Constituency  
Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.  
Mukurueni Constituency  
Jubilee Party

Hon. Japheth Mutai, M.P.  
Bureti Constituency  
Jubilee Party

Hon. John Kiarie Waweru, M.P.  
Dagoretti South Constituency  
**Jubilee Party**

Hon. Anthony Oluoch, M.P.  
Mathare Constituency  
**Orange Democratic Movement (ODM)**

Hon. Robert Gichimu Githinji, M.P.  
Gichugu Constituency  
**Jubilee Party**



#### 1.4 Committee Secretariat

4. The Committee secretariat is comprised of;

Mr. Abenayo Wasike  
**Principal Clerk Assistant**  
**Lead Clerk**

Mr. Denis Abisai  
**Principal Legal Counsel I**

Ms. Halima Hussein  
**Clerk Assistant II**

Mr. Ahmed Hassan Odhowa  
**Principal Research Officer**

Mr. Omar Abdirahim  
**Fiscal Analyst II**

Ms. Roselyne Ndegi  
**Serjeant-at-Arms I**

Mr. Joseph Okongo  
**Media Liaison Officer**

5. Minutes of sittings of the Committee on the consideration of the Bill are attached to this report as **annexure 1**

## CHAPTER TWO

### 2.0 OVERVIEW OF THE BUSINESS LAWS (AMENDMENT) (NO.2) BILL, 2020

6. This chapter of the report outlines the overview of the Bill, the purposes and reasons for the proposed amendments to the various statutes.

### 2.1 ANALYSIS OF THE BILL

7. The Bill seeks to amend the following ten (10) statutes;
8. **The Law of Contract Act (Cap. 23):** The part proposes to amend the Act to recognize as properly signed any documents validly executed by body corporates under section 37 of the Companies Act, No. 17 of 2015.
9. **Industrial Training Act (Cap. 237):** The part proposes to amend the Act to provide for the payment of the training levy to be remitted at the end of a business's financial year but not later than the ninth day of the month following end of the financial year.
10. **Stamp Duty Act (Cap. 480):** The part proposes to amend the Act to exempt payment of fixed stamp duty of one hundred shillings on contracts for purposes of reducing the cost of doing business.
11. **National Hospital Insurance Fund Act, 1998:** The part proposes to amend the Act to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.
12. **National Construction Authority Act, 2011:** The part proposes to amend the Act to provide for power of the Board to inquire into defects in a building to establish the cause of the defects in terms of structural defects and latent defects and the liability on the part of a registered person.
13. **Land Registration Act No. 3 of 2012:** The part proposes to amend the Act to eliminate the use of company seals in execution of documents by companies incorporated under the Companies Act, 2015, eliminate the requirement to submit Land Rent and Rate Clearance Certificate and Consents in other land transactions.
14. **National Social Security Fund Act, 2013:** The part proposes to amend the Act to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.
15. **Companies Act No. 17 of 2015:** The part proposes to amend the Act to enable companies to hold general meetings through physical, virtual or hybrid meetings. The proposed amendments also seek to delete paragraph 11 of the Sixth Schedule to the Act which provides for the continued validity of official seals of companies issued under section 42 of the Companies Act.

16. **Insolvency Act No. 18 of 2015:** The part proposes to amend the Act to clarify that an administrator can distribute routine payment to unsecured creditors without courts permission. It also seeks to introduce a pre-insolvency moratorium period to prevent creditors from taking an enforcement action while a company considers its option for rescue.

17. **Small Claim Courts Act, 2016:** The part proposes to amend the Act to make provision to fast track procedure for small claims by providing a sixty –day timeline for adjudication of small claims.



## CHAPTER THREE

### 3.0 CONSIDERATION OF THE BILL

18. The Bill is an omnibus Bill proposing amendments to various statutes. The proposed amendments were considered by Departmental Committees under whose mandate the statutes to be amended fall and the report was compiled by the Departmental Committee on Justice and Legal Affairs. The proposed amendments were considered by the following Committees:-

#### 3.1 Departmental Committee on Justice and Legal Affairs

19. The Committee considered the proposed amendments to the following Statutes;
- a) The Law of Contract Act (Cap 23)
  - b) The Companies Act No. 17 of 2015
  - c) The Insolvency Act No. 18 of 2015
  - d) The Small Claims Court Act (No.2 of 2016)

#### 3.2 Departmental Committee on Labour and Social Welfare

20. The Committee considered the proposed amendments to the Industrial Training Act (Cap. 237) and the National Social Security Fund Act (No.45 of 2013)

#### 3.3 Departmental Committee on Finance and National Planning

21. The Committee considered the proposed amendments to the Stamp Duty Act (Cap 480)

#### 3.4 Departmental Committee on Health

22. The Committee considered the proposed amendments to the National Hospital Insurance Fund Act, 1998

#### 3.5 Departmental Committee on Lands

23. The Committee considered the proposed amendments to the Land Registration Act (No.3 of 2012)

#### 3.6 Departmental Committee on Transport, Public Works and Housing

24. The Committee considered the proposed amendments to the National Construction Authority Act No. 41 of 2011

## CHAPTER FOUR

### 4.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

25. The Committee pursuant to the provisions of Article 118(1)(b) of the Constitution as read together with Standing Order 127(3) invited the public to make submissions regarding the proposed amendments to the Bill through an advertisement on 12<sup>th</sup> February 2021. (A copy of the newspaper advertisement is attached as **annexure 3**).
26. The Committee received the following memoranda by the public:-
- (a) The Business Registration Service (Office of the Attorney-General and Department of Justice)
  - (b) The Ministry of East African Community and Regional Development
  - (c) National Industrial Training Authority
  - (d) The National Social Security Fund (NSSF)
  - (e) The Nairobi Securities Exchange
  - (f) Kenya Association of Stockbrokers
  - (g) Investment Banks (KASIB)
  - (h) Kenya Association of Stockbrokers
  - (i) The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
  - (j) The Engineers Board of Kenya
  - (k) The Ministry of Lands and Physical Planning
  - (l) The National Land Commission
27. The Committees extensively considered the contents of the submissions and made observations and resolutions as contained in **Chapter 5** of the report.

## CHAPTER FIVE

### 5.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

28. This part of the report contains the clause by clause consideration of the Bill, the submissions from the public, observations and recommendations by the various Departmental Committees that considered the Bill.

#### THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

29. **Clause 1 on short title of the Bill:** This section sets out the short title of the proposed Act as the Business Laws (Amendment) (No.2) Bill, 2020 (National Assembly Bill No.50 of 2020). The Committee observed that there were no stakeholder comments received on this provision and recommends that clause 1 of the Bill be agreed to as contained in the Bill.

30. **Clause 2 on the proposed amendment to section 3 of the Law of Contract Act, Cap. 23**

2. Section 3 of the Law of Contract Act is amended in subsection (6), in the definition of the term “*sign*”, by inserting the following new paragraph immediately after paragraph (b)—

*(c) execution of the document in accordance with section 37 of the Companies Act, 2015, for body corporates incorporated under the Companies Act, 2015.*

31. **Committee observation:** The Committee observed that the justification of the amendment as expressed in Clause 1 of the Memorandum of Objects and Reasons of the Bill was misleading since the amendment had nothing to do with eliminating the requirement for company seals in execution of documents by companies registered under the Companies Act, No. 17 of 2015 and that the amendment actually sought to recognize as properly signed any documents validly executed by body corporates under section 37 of the Companies Act, No. 17 of 2015. The Committee further observed that there were no stakeholder comments received on this provision and recommends that clause 2 of the Bill be agreed to as contained in the Bill.

32. **Clause 14 on the proposed amendment to section 3 of the Companies Act, No. 17 of 2015**

14. Section 3 of the Companies Act is amended—

(a) in the definition of the term “*general meeting*” by inserting the words “*which may be a physical, virtual or hybrid meeting*” immediately after the words “*general meeting*”

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



“*hybrid meeting*” in relation to a company general meeting, means a meeting where some participants are in the same physical location while other participants join the meeting through electronic means including video conference, audio conference, web conference or such other electronic means.

“*virtual meeting*” in relation to a company general meeting, means a meeting where all members join and participate in the meeting through electronic means including video conference, audio conference, web conference or such other electronic means.

33. **Committee observation and recommendation:** The Committee observed that the amendment sought to expand the definition of a company ‘general meeting’ in order to enable companies to hold meetings either physically, virtually or through hybrid method and that the amendment sought to define the terms “hybrid meeting” and “virtual meeting” for harmonization and consistency purposes within the Act. The Committee recommends that clause 14 of the Bill be agreed to as contained in the Bill.

34. **Clause 15 on the proposed amendment to section 283 of the Companies Act, No. 17 of 2015**

15. Section 283 of the Companies Act is amended in sub-section (2) by inserting the following new paragraph immediately after paragraph (b)—

*(ba) “in the case of a hybrid or virtual meeting, specify the means of joining and participating in the meeting”; and.*

35. **Committee observation and recommendation:** The Committee observed that the amendment requires a company to specify the means of joining and participating in a virtual or hybrid meeting when the company is publishing a notice of a general meeting on the company’s website and recommends that clause 15 of the Bill be agreed to as contained in the Bill.

36. **Clause 16 on the proposed amendment to section 285 of the Companies Act, No. 17 of 2015**

16. Section 285 of the Companies Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

*(ba) “in the case of a hybrid or virtual meeting, specify the means of joining and participating in the meeting”; and.*

37. **Committee observation and recommendation:** The Committee observed that the amendment requires a company to specify the means of joining and participating in a virtual or hybrid meeting when the company is publishing a notice of a general meeting and recommends that clause 16 of the Bill be agreed to as contained in the Bill.

38. **Clause 17 on the proposed amendment to the Sixth Schedule of the Companies Act, No. 17 of 2015**

17. The Sixth Schedule to the Companies Act is amended by deleting paragraph 11.

39. **Committee observation and recommendation:** The Committee observed that the amendment seeks to delete paragraph 11 of the Sixth Schedule which provides for the continued validity of official seals of companies issued under section 42 of the Companies Act and noted that the amendment is consistent with the changes brought about by the Business Laws (Amendment) Act, 2020 and it is no longer compulsory for a Kenyan incorporated company to have a ‘common seal’ or attach seals to documentation. The Committee recommends that clause 17 of the Bill be agreed to as contained in the Bill.

40. **Clause 18 on the proposed amendment to section 474 of the Insolvency Act, No. 18 of 2015**

18. Section 474 of the Insolvency Act is amended by deleting sub-section (5) and substituting therefor the following new subsection—

(5) “*Sub-section (2) does not apply to a company if—*

(a) *the liquidator, administrator or provisional liquidator applies to the Court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.*

(b) *a holder of a floating charge applies to the Court on the grounds that the effect of subsection (2) unfairly harms its interests; and*

(c) *as a result of such an application, the Court orders that subsection (2) is not to apply or is to apply subject to the conditions the Court considers just”.*

41. **Committee observation and recommendation:** The Committee observed that the amendment seeks to empower the holder of a floating charge to apply to the Court to exempt the application of section 474(2) of the Insolvency Act to the company on the ground that the effect of the sub-section (2) unfairly harms its interests and also noted the submissions by the Business Registration Service that the new sub-section (5)(b) allows a floating charge holder dissatisfied with the apportionment of the net assets secured under a floating charge to be made available to the unsecured creditors, to apply to court for relief. The Committee recommends that clause 18 of the Bill be agreed to as contained in the Bill.

42. **Clause 19 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

19. The Insolvency Act is amended—

(a) by deleting the sub-heading “*Division 2 – Moratoria on debt payments when company’s director propose voluntary arrangement*” appearing immediately after section 635 and substituting therefore the following new sub-heading—

“*PART IXA – PRE-INSOLVENCY MORATORIUM*”; and

(b) by deleting the sub-heading “*Sub-division 1*” appearing immediately before section 636 and substituting therefor the subheading “*Division 1*”.



43. **Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published. And recommends that clause 19 of the Bill be agreed to as contained in the Bill.

44. **Clause 20 on the proposed amendment to section 636 of the Insolvency Act, No. 18 of 2015**

20. Section 636 of the Insolvency Act is amended—

(a) in subsection (1) —

(i) by deleting the subheading “*Division*” and substituting therefor the subheading “*Part*”;

(ii) by deleting the definition of the term “proposal”;

(iii) by inserting the following new definition in proper alphabetical sequence—

“*monitor*” means the person designated as such under section 643(2)(b)”;

(iv) by deleting the definition of the term “*moratorium committee*”; and

(b) by deleting sub-section (2).

45. **Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and that the amendment proposes to delete the definition of the term “moratorium committee” and insert the definition of the term “monitor” as the person designated as such under section 643(2)(b) of the Act. The Committee also noted the submissions by the Business Registration Service that the deletion of the definition of ‘moratorium committee’ is for the purposes of simplifying the provision to make it easier for the voluntary arrangement to be adopted by the creditors. The Committee recommends that clause 20 of the Bill be agreed to as contained in the Bill.

46. **Clause 21 on the proposed amendment to section 637 of the Insolvency Act, No. 18 of 2015**

21. Section 637 of the Insolvency Act is amended —

(a) in the marginal note, by deleting the word “*Division*” and substituting therefor the word “*Part*”; and

(b) by deleting paragraph (d).

47. **Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and that the amendment proposes to delete paragraph (d) which sets out the procedure applicable in

relation to the approval and implementation of a voluntary arrangement when such a moratorium is or has been in force. The Committee recommends that clause 21 of the Bill be agreed to as contained in the Bill.

**48. Clause 22 on the proposed amendment to section 638 of the Insolvency Act, No. 18 of 2015**

22. Section 638 of the Insolvency Act is amended—

(a) in paragraph (b), by deleting the word '*Subdivision*' and substituting therefore the word '*Part*'; and

(a) by inserting the following new paragraph immediately after paragraph (b)—  
(c) "*is financially distressed*"

**49. Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and that the amendment proposes to insert a new paragraph (c) which enables a company to obtain a moratorium on the additional ground that the company is financially distressed. The Committee recommends that clause 22 of the Bill be agreed to as contained in the Bill.

**50. Clause 23 on the proposed amendment to section 640 of the Insolvency Act, No. 18 of 2015**

23. Section 640 of the Insolvency Act is amended—

(a) in paragraph (e), by deleting sub-paragraphs (i) and (ii);

(b) in paragraph (g), by deleting the expression "*section 630(7)(a)*" and substituting therefor the expression "*section 630(5)(a)*"; and

(c) in paragraph (h), by deleting the words "*under the repealed Companies Act*".

**51. Committee observations and recommendation:** The Committee observed that the amendment proposes to delete subparagraphs (i) and (ii) of paragraph (e) that relates to voluntary arrangements with companies under financial distress. The Committee further observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 23 of the Bill be agreed to as contained in the Bill.

**52. Clause 24 on the proposed amendment to section 642 of the Insolvency Act, No. 18 of 2015**

24. The Insolvency Act is amended by repealing section 642.

53. The Business Registration Service via a letter submitted that the proposal to delete section 642 was unfairly locking out companies with significantly large outstanding.

**54. Committee observations and recommendation;** The Committee observed that the amendment proposes to repeal section 642 of the Act which makes companies with large outstanding liabilities of one billion shillings or more ineligible to obtain a moratorium

under section 638 of the Act. The Committee also noted the submissions by the Business Registration Service that the provision was being deleted because it was unfairly locking out companies with significantly large outstanding liabilities yet Company Voluntary Arrangements are contingent on their approval by the company's creditors. The Committee recommends that clause 24 of the Bill be agreed to as contained in the Bill.

**55. Clause 25 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

25. The Insolvency Act is amended by deleting the subheading "*Sub-division 2*" appearing immediately after section 642 and substituting therefor the sub-heading "*Division 2.*"

**56. Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 25 of the Bill be agreed to as contained in the Bill.

**57. Clause 26 on the proposed amendment to section 643 of the Insolvency Act, No. 18 of 2015**

26. Section 643 of the Insolvency Act is amended—

(a) by deleting sub-section (1);

(b) in sub-section (2) —

(c)

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

*(a) "a document setting out why a moratorium is desirable, which may include evidence that it will assist in agreeing an informal restructuring or other agreement with creditors or entering a formal insolvency procedure which could lead to the rescue or efficient liquidation of the company";*

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

*(b) "appoint as its monitor an authorized insolvency practitioner who has consented to supervise it";*

(a) by deleting subsection (3) and substituting therefor the following new paragraph—

*(3) "The directors shall submit the documents required under subsection (2) to the monitor for consideration and comment".*

(b) in subsection (4) —

(i) by deleting the words "*provisional supervisor*" and substituting therefor the word "*monitor*" wherever it appears in the subsection.

(ii) by deleting the words "*that supervisor*" and substituting therefor the words "*the monitor*";

(c) in subsection (5) —

(i) by deleting the words "*provisional supervisor*" and substituting therefor the word "*monitor*";



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

(a) *“the proposed moratorium has a reasonable prospect of achieving its aim”*;

(iii) by deleting paragraph (c);

(d) in subsection (6) —

(i) by deleting the words *“provisional supervisor”* appearing immediately after the words *“in sub-section (5)”* and substituting therefor the word *“monitor”*;

(ii) by deleting the word *“supervisor”* appearing immediately after the words *“unless that”* and substituting therefor the word *“monitor”*; and

(e) in sub-section (7) by deleting the word *“it”* appearing immediately after the word *“carry”*.

58. The Business Registration Service submitted that the proposed deletion in this clause is to avoid repetition because subsection (2) has similar provisions and is more specific

59. **Committee observation:** The Committee observed that

a) The amendment to sub-section (1) seeks to delete the provision empowering directors of an eligible company to make a proposal for a voluntary arrangement and take the required steps to obtain a moratorium for the company. The Committee noted the submissions by the Business Registration Service that the deletion is to avoid repetition because subsection (2) has similar provisions and is more specific.

b) The amendment requires directors of a company obtaining a moratorium to no longer deal with ‘provisional supervisors’ appointed under section 643(2)(b) of the Act and replaces them with ‘monitors’ who shall be authorized insolvency practitioners.

60. **Committee recommendation:** The Committee recommends that clause 26 of the Bill be agreed to as contained in the Bill.

61. **Clause 27 on the proposed amendment to section 644 of the Insolvency Act, No. 18 of 2015**

27. Section 644 of the Insolvency Act is amended in subsection (1) —

(a) in paragraph (a), by deleting the words *“proposal and statement”* and substituting therefor the word *“documents”*;

(b) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) *“a statement from the monitor that the monitor has consented to act as monitor of the moratorium”*;

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

(e) *“a statement from the monitor that, in the monitor’s opinion—*

*(i) the proposed moratorium has a reasonable prospect of achieving its aims; and*

*(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business”.*

62. The Business Registration Service submitted that that the deletion of sub-paragraph (1) (d) (iii) is for the purpose of simplifying the process of obtaining a moratorium.

63. **Committee observations:** The Committee observed that;

a) The amendment to paragraph (c) seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act.

b) The submissions by the Business Registration Service that the deletion of sub-paragraph (1) (d)(iii) is for the purpose of simplifying the process of obtaining a moratorium. This is because a meeting with creditors would cause unnecessary delay and further the creditors have no role to play at this point.

64. **Committee recommendation:** The Committee recommends that clause 267 of the Bill be agreed to as contained in the Bill.

65. **Clause 28 on the proposed amendment to section 645 of the Insolvency Act, No. 18 of 2015**

28. Section 645 of the Insolvency Act is amended—

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

*(2) “A moratorium ends after thirty days from and including the day on which the moratorium takes effect, unless the moratorium period is extended under section 669”.*

(b) by deleting subsection (3);

(c) by deleting subsection (6);

(d) by deleting subsection (7); and

(e) in subsection (8), by deleting the expression “*subsection (3)*” and substituting therefor the expression “*subsection (2)*”.

66. The Business Registration Service submitted that the proposed amendment in the clause the amendment seeks to simplify the provision and provide clarity.

67. **Committee observations:** The Committee observed that;

- a) The proposed amendment to sub-section (2) seeks to modify the current provision and provides that a moratorium ends after thirty days from and including the day on which the moratorium takes effect, unless the moratorium period is extended under section 669 of the Act. The Committee also noted the submissions by the Business Registration Service that the amendment seeks to simplify the provision and provide clarity.
- b) The amendment seeks to make consequential amendments to sub-sections (3), (6) and (7) in light of the amendment made to sub-section (2) of section 645 of the Act.

68. **Committee recommendation:** The Committee recommends that clause 28 of the Bill be agreed to as contained in the Bill.

69. **Clause 29 of the proposed amendment to section 646 of the Insolvency Act, No. 18 of 2015**

29. Section 646 of the Insolvency Act is amended—

- (a) in subsection (1), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”; and
- (b) in subsection (3), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”.

70. **Committee observations and recommendation:** The Committee observed that the amendments to sub-sections (1) and sub-section (3) seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 29 of the Bill be agreed to as contained in the Bill.

71. **Clause 30 on the proposed amendment to section 647 of the Insolvency Act, No. 18 of 2015**

30. Section 647 of the Insolvency Act is amended—

- (a) in the marginal note, by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (b) in subsection (1) —
  - (i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
  - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
    - (b) “*give a notice to the effect that the moratorium has taken effect to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium*”; and



(c) in subsection (2), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(d) in subsection (3) —

(i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(ii) by deleting the words “*that supervisor*” and substituting therefor the words “*the monitor*”.

72. **Committee observation:** The Committee observed that the amendments seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 30 of the Bill be agreed to as contained in the Bill.

73. **Clause 31 on the proposed amendment to section 648 of the Insolvency Act, No. 18 of 2015**

31. Section 648 of the Insolvency Act is amended—

(a) in the marginal note by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(b) in subsection (1), —

(i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) “*give to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium a notice to the effect that the moratorium has ended*”; and

(c) in subsection (2), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(d) in sub-section (3) —

(i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(ii) by deleting the words “*that supervisor*” and substituting therefor the words “*the monitor*”.

74. **Committee observation and recommendation:** The Committee observed that the amendments seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with



the amendments made to section 643(2)(b) of the Act and recommends that clause 31 of the Bill be agreed to as contained in the Bill.

**75. Clause 32 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

32. The Insolvency Act is amended by deleting the subheading "*Subdivision 3*" appearing immediately after section 648 and substituting therefor the subheading "*Division 3*".

**76. Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 32 of the Bill be agreed to as contained in the Bill.

**77. Clause 33 on the proposed amendment to section 649 of the Insolvency Act, No. 18 of 2015**

33. Section 649 of the Insolvency Act is amended—

(a) in sub-section (1)—

(i) in paragraph (a) by inserting the word "*of*" immediately after the word "*liquidation*";

(ii) in paragraph (b), by deleting the words "*provisional supervisor*" appearing in subparagraph (i) and substituting therefor the word "*monitor*";

(iii) by inserting the following new paragraph immediately after paragraph (f)—  
(fa) "*an administrative receiver of the company may not be appointed*";

(b) in subsection (2), by deleting the words "*or at a time referred to in section 666(5)(a)*";

(c) in subsection (4), by deleting the expression "*section 424*" and substituting therefor the expression "*section 426*";

**78. Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published. The Committee further observed that the amendments seek to replace 'provisional supervisor' with 'monitor' in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 33 of the Bill be agreed to as contained in the Bill.

**79. Clause 34 on the proposed amendment to section 651 of the Insolvency Act, No. 18 of 2015**

34. Section 651 of the Insolvency Act is amended by deleting the words "*enforcement of*".

**80. Committee observation and recommendation:** The Committee observed that the amendment seeks to remove superfluous words appearing in section 651 of the Act as published and recommends that clause 34 of the Bill be agreed to as contained in the Bill.

**81. Clause 35 on the proposed amendment to section 653 of the Insolvency Act, No. 18 of 2015**

35. Section 653 of the Insolvency Act is amended—

- (a) in the marginal note by deleting the words “*provisional supervisor’s*” and substituting therefor the word “*monitor’s*”; and
- (b) in subsection (1), by deleting the words “*provisional supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”.

82. **Committee observation and recommendation:** The Committee observed that the amendments seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 35 of the Bill be agreed to as contained in the Bill.

**83. Clause 36 on the proposed amendment to section 655 of the Insolvency Act, No. 18 of 2015**

36. Section 655 of the Insolvency Act is amended —

- (a) in subsection (1), by deleting the words “*provisional supervisor*” appearing in paragraph (b) and substituting therefor the word “*monitor*”; and
- (b) by deleting paragraph (1)(b) and substituting therefor the following new paragraph—  
(b) “*the disposal is approved by the monitor*”.

84. **Committee observation and recommendation:** The Committee observed that the amendments seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 36 of the Bill be agreed to as contained in the Bill.

**85. Clause 37 on the proposed amendment to section 656 of the Insolvency Act, No. 18 of 2015**

37. Section 656 of the Insolvency Act is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph

- (b) “*the payment is approved by the monitor*”

86. **Committee observation and recommendation:** The Committee observed that the amendments seek to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 37 of the Bill be agreed to as contained in the Bill.

**87. Clause 38 on the proposed amendment to section 657 of the Insolvency Act, No. 18 of 2015**

38. Section 657 of the Insolvency Act is amended-

- (a) in subsection (2), by deleting the words “*to which this section applies*” and substituting therefor the words “*that is subject to a security*”;



(b) in subsection (3), by deleting the words “to which this section applies” and substituting therefor the words “in the possession of the company under a credit purchase transaction”

88. **Committee observations:** The Committee observed that:-

- a) The amendment to sub-section (2) seeks to clarify that a company may only transfer property that is subject to security under the Act.
- b) The amendment to sub-section (3) seeks to clarify that a company may only dispose of goods where the goods are in the possession of the company under a credit purchase agreement.

89. **Committee recommendation:** The Committee recommends that clause 38 of the Bill be agreed to as contained in the Bill.

90. **Clause 39 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

39. The Insolvency Act is amended by deleting the sub-heading “*Subdivision 4 – Provisional supervisors*” appearing immediately after section 657 and substituting therefor the subheading “*Division 4 – Monitors*”.

91. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that the Clause 39 of the Bill be agreed to as contained in the Bill.

92. **Clause 40 on the proposed amendment to section 658 of the Insolvency Act, No. 18 of 2015**

40. Section 658 of the Insolvency Act is amended—

(a) “in the marginal note by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor’s*”;

(b) by deleting sub-section (1) and substituting therefor the following new sub-section—

*(1) “During the moratorium, the monitor is responsible for monitoring the company’s activities in order to ascertain whether the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business”*

(c) in sub-section (2) —

(i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(ii) by deleting the word “*supervisor*” and substituting therefor the word “*monitor*”;

(d) in subsection (3) —

- (i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”; and
- (ii) by deleting the words “*supervisor*” and substituting therefor the word “*monitor*”;
- (e) in subsection (4), by deleting the expression “*subsection (1)(b)*” and substituting therefor the expression “*subsection (1)*”; and
- (f) in subsection (5) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”.

93. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that Clause 40 of the Bill be agreed to as contained in the Bill.

94. **Clause 41 on the proposed amendment to section 659 of the Insolvency Act, No. 18 of 2015**

41. Section 659 of the Insolvency Act is amended—

- (a) in the marginal note, by deleting the words “*provisional supervisor’s*” and substituting therefor the word “*monitor’s*”;
- (b) in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph—
  - (a) *the monitor concludes that the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;*
- (c) in subsection (2), by deleting the expression “*sub-section (1)(a)(ii)*” and substituting therefor the expression “*sub-section (1)(a)*”;
- (d) in sub-section (3) by deleting the word “*provisional supervisor’s*” and substituting therefor the word “*monitor*”;
- (e) in sub-section (4) —
  - (i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
  - (ii) by deleting the word “*supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”;
- (f) by deleting subsection (5);
- (g) in sub-section (6), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;



(h) in subsection (7) –

- (i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (ii) by deleting the words “*supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”.

95. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that Clause 41 of the Bill be agreed to as contained in the Bill.

96. **Clause 42 on the proposed amendment to section 660 of the Insolvency Act, No. 18 of 2015**

42. Section 660 of the Insolvency Act is amended—

- (a) in the marginal note by deleting the words “*provisional supervisor’s*” and substituting therefor the word “*monitor’s*”;
- (b) in sub-section (1), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (c) in sub-section (3), by deleting the words “*provisional supervisor*” appearing in paragraph (b) and substituting therefor the word “*monitor*”.

97. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that Clause 42 of the Bill be agreed to as contained in the Bill.

98. **Clause 43 on the proposed amendment to section 661 of the Insolvency Act, No. 18 of 2015**

43. Section 661 of the Insolvency Act is amended—

- (a) in the marginal note by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (b) in sub-section (1) —
  - (i) by deleting the words “*provisional supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”;
  - (ii) by deleting the word “*supervisor*” appearing in paragraph (b) and substituting therefor the word “*monitor*”;

(a) in sub-section (3) —

- (i) by deleting the words “*provisional supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”; and
- (ii) by deleting the word “*supervisor*” appearing in paragraph (b) and substituting therefor the word “*monitor*”.

99. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act recommends that Clause 43 of the Bill be agreed to as contained in the Bill.

100. **Clause 44 on the proposed amendment to section 662 of the Insolvency Act, No. 18 of 2015**

44. Section 662 of the Insolvency Act is amended—

(a) in the marginal note by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;

(b) in subsection (1) —

- (i) by deleting the expression “*subsection (3)*” and substituting therefor the expression “*subsection (2)*”;
- (iii) by deleting the word “*Division*” appearing in paragraph (a) and substituting therefor the following new word “*Part*”;
- (iv) by deleting the words “*provisional supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”;
- (ii) by deleting the word “*supervisor*” appearing in paragraph (a) and substituting therefor the word “*monitor*”; and
- (iii) by deleting the word “*supervisor*” appearing in paragraph (b) and substituting therefor the word “*monitor*”;

(c) in sub-section (2), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”; and

(d) in subsection (3), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”.

101. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisors’ with ‘monitors’ in accordance with the amendments made to section 643(2)(b) of the Act. The Committee further observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 44 of the Bill be agreed to as contained in the Bill.



**102. Clause 45 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

45. The Insolvency Act is amended by deleting the sub-heading "*Sub-division 5 – Consideration of proposal for and implementation of voluntary arrangement*" appearing immediately after section 662.

103. **Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 45 of the Bill be agreed to as contained in the Bill.

**104. Clause 46 of the proposed amendment to the Insolvency Act, No. 18 of 2015**

46. The Insolvency Act is amended by repealing section 663.

105. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 663 of the Act which empowers the provisional supervisors to convene a meeting of the company and a meeting of the company's creditors and that the amendment is consequential to the amendments made to section 643(2)(b) of the Act. The Committee recommends that clause 46 of the Bill be agreed to as contained in the Bill.

**106. Clause 47 of the proposed amendment to the Insolvency Act, No. 18 of 2015**

47. The Insolvency Act is amended by repealing section 664.

107. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 664 of the Act which provides further details on a meeting of the company's creditors convened by the provisional supervisor and that the amendment is consequential to the amendments made to section 643(2)(b) and section 663 of the Act. The Committee recommends that clause 47 of the Bill be agreed to as contained in the Bill.

**108. Clause 48 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

48. The Insolvency Act is amended by repealing section 665.

109. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 665 of the Act which relates to approvals of voluntary arrangements between the company and its creditors and that the amendment is consequential to the amendments made to section 664 of the Act. The Committee recommends that clause 48 of the Bill be agreed to as contained in the Bill.

**110. Clause 49 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

49. The Insolvency Act is amended by repealing section 666.

111. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 666 of the Act which makes further provisions on voluntary arrangements between the company and its creditors and that the amendment is

consequential to the amendments made to section 665 of the Act. The Committee recommends that clause 49 of the Bill be agreed to as contained in the Bill.

**112. Clause 50 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

50. The Insolvency Act is amended by repealing section 667.

**113. Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 667 of the Act which provides for the right to challenge decisions made in respect of voluntary arrangements between the company and its creditors and that the amendment is consequential to the amendments made to section 666 of the Act. The Committee recommends that clause 50 of the Bill be agreed to as contained in the Bill.

**114. Clause 51 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

51. The Insolvency Act is amended by repealing section 668.

**115. Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 668 of the Act which provides for the implementation of voluntary arrangements between the company and its creditors and that the amendment is consequential to the other amendments made to the Act. The Committee recommends that clause of the Bill be agreed to as contained in the Bill.

**116. Clause 52 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

52. The Insolvency Act is amended by deleting the sub-heading "*Sub-division 6*" appearing immediately after section 668 and substituting therefore the sub-heading "*Division 5*".

**117. Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published. The Committee recommends that clause 52 of the Bill be agreed to as contained in the Bill.

**118. Clause 53 on the proposed amendment to section 669 of the Insolvency Act, No. 18 of 2015**

53. The Insolvency Act is amended by repealing section 669 and replacing it with the following new section—

*Extension of moratorium*      **669.** "*On the application of the directors, the Court may extend a moratorium for a period of at least thirty days if the Court believes that the extension is desirable in order to achieve the aims for which the moratorium was initially obtained under section 643*".



119. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal the current provision and empower the directors of the company to apply to the Court for an extension of the moratorium for a period of at least thirty days if the Court believes that the extension is desirable in order to achieve the purposes for which the moratorium was initially obtained and recommends that clause 53 of the Bill be agreed to as contained in the Bill.

120. **Clause 54 on the proposed amendment to section 670 of the Insolvency Act, No. 18 of 2015**

54. Section 670 of the Insolvency Act is amended—

- (a) in subsection (1), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (b) in subsection (2), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (c) by deleting subsection (3).

121. **Committee observation and recommendation:** The Committee observed that the amendment seeks to replace ‘provisional supervisor’ with ‘monitor’ in accordance with the amendments made to section 643(2)(b) of the Act and recommends that clause 54 of the Bill be agreed to as contained in the Bill.

122. **Clause 55 on the proposed amendment to section 671 of the Insolvency Act, No. 18 of 2015**

55. Section 671 of the Insolvency Act is amended—

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

*(1) “If the Court extends, or further extends, the moratorium, the monitor shall within seven days of the order, lodge a copy of the order with the Registrar for registration”.*

- (b) by deleting sub-section (2);
- (d) in sub-section (3), by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
- (e) in subsection (4) —
  - (i) by deleting the words “*provisional supervisor*” and substituting therefor the word “*monitor*”;
  - (ii) by deleting the word “*supervisor*” and substituting therefor the word “*monitor*”.

123. **Committee observation and recommendation:** The Committee observed that the amendment to sub-section (1) seeks to modify the current provision and provide that where the Court extends a moratorium, the monitor shall lodge a copy of the order with the Registrar within seven days and that the amendment seeks to replace 'provisional supervisor' with 'monitor' in accordance with the amendments made to section 643(2)(b) of the Act. The Committee recommends that clause 55 of the Bill be agreed to as contained in the Bill.

**124. Clause 56 on the proposed amendment to section 672 of the Insolvency Act, No. 18 of 2015**

56. The Insolvency Act is amended by repealing section 672.

125. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 672 of the Act which makes further provisions as regards meetings held under section 663 (proposed for repeal) and that the amendment is consequential to the other amendments made to the Act. The Committee recommends that clause 56 of the Bill be agreed to as contained in the Bill.

**126. Clause 57 on the proposed amendment to the Insolvency Act, No. 18 of 2015**

57. The Insolvency Act is amended by deleting the sub-heading "*Sub-division 7*" appearing immediately after section 672 and substituting therefor the subheading "*Division 6*".

127. **Committee observation and recommendation:** The Committee observed that the amendment seeks to correct technical drafting errors in the Act as published and recommends that clause 57 of the bill be agreed to as contained in the Bill.

**128. Clause 58 on the proposed amendment to section 673 of the Insolvency Act, No. 18 of 2015**

58. The Insolvency Act is amended by repealing section 673.

129. **Committee observation and recommendation:** The Committee observed that the amendment seeks to repeal section 673 of the Act which makes further provisions as regards meetings held under section 664 (proposed for repeal) and that the amendment is consequential to the other amendments made to the Act. The Committee recommends that clause 58 of the Bill be agreed to as contained in the Bill.

**130. Clause 59 on the proposed amendment to section 674 of the Insolvency Act, No. 18 of 2015**

59. Section 674 of the Insolvency Act is amended in subsection (2)—

(a) in paragraph (a), by inserting the word "*unfairly*" immediately before the word "*detrimental*"; and

(b) in paragraph (b), by inserting the word "*unfairly*" immediately before the word "*detrimental*".



131. **Committee observation and recommendation:** The Committee observed that the amendment seeks to sub-section (2) seek to clarify that a member or a creditor of a company may only challenge the decisions of the directors of the ground that the company's affairs or property are being run in a manner that is 'unfairly detrimental' to the interests of the members or creditors of the company. The Committee recommends that clause 59 of the Bill be agreed to as contained in the Bill.

132. **Clause 60 on the proposed amendment to section 34 of the Small Claims Court Act, No. 2 of 2016**

60. Section 34 of the Small Claims Court Act is amended in sub-section (2) by inserting the words "of the matter which shall be within sixty days from the date of lodging" immediately after the word "determination".

133. The Committee received a written memorandum from Ministry Of East African Community and Regional Development on the proposed amendment to section 34 of the Small Claims Court Act, No. 2 of 2016 and proposed redrafting of Section 34 subsection (1) to read as follows: -

*"All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within sixty days from the date of filing the claim"*

134. **Committee observations:** The Committee observed that:-

- a) The proposed amendment seeks to provide for a timeline of sixty days within which the small claims must be heard and determined. The Committee, however, observed that the amendment was misplaced and is not in harmony with the existing sub-section (2) which provides that the judgment shall be delivered on the same day after the hearing and in any event not later than three days from the date of hearing.
- b) The submissions by the Ministry of the East Africa Community and Regional Development that there was indeed need to redraft the amendment and instead section 34(1) of the Act instead of section 34(2) of the Act as proposed in the Bill as published.

135. **Committee recommendation:** The Committee recommends that clause 60 of the Bill be amended as follows-

***CLAUSE 60: THAT the Bill be amended by deleting Clause 60 and substituting therefor the following new clause-***

***Amendment of 60. Section 34 of the Small Claims Court Act is amended in section 34 of No. 2 of 2016 sub-section (1) by inserting the words 'of the matter which shall be within sixty days from the date of filing the claim' immediately after the word 'determination' appearing at the end of the sub-section.***



136. **Justification for the amendment in clause 60:** The Committee agreed with the submissions by the Ministry of the East Africa Community and Regional Development that there is need to amend the provision and provide a timeline of sixty days from the date of filing within which the small claims must be heard and determined. The amendment thus seeks to guarantee expeditious resolution of the small claims disputes and enhances the business environment for local and foreign investors in the economy.

## DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

137. The Committee considered the proposed amendment to section 5B of the Industrial training Act in clause 3 of the Bill: -

Section 5B of the Industrial Training Act (Cap 237) is amended by providing that *“the amount payable under the levy shall be remitted at the end of the financial year of the business but not later than the ninth day of the month following end of the financial year”*

138. The Committee received submissions from National Industrial Training Authority and National Social Security Fund as follows: -

139. The Training Authority forwarded a memorandum in support of the amendment to the Industrial Training Act (Cap. 237) and the Committee observed that;

- a) Stakeholders agreed with the amendment;
- b) Remittance of the levy annually will enable businesses sufficient time to secure sufficient funds to enable them comply with the statutory requirement for payment of the levy;
- c) Anchoring the specified date for payments in law will empower the National Industrial Training Authority to take action against any businesses that do not comply with the statutory requirements to remit the training levy on time; and
- d) The proposed date of ninth of the month is the proposed date for remittance of other statutory payroll deductions through the Kenya Revenue Authority’s Unified Payroll Return. This will result in reduction of attendant costs of remittance of funds to different institutions hence contributing to ease of doing business in the country.

140. **The Committee recommendations:** The Committee recommends that clause 3 of the Bill be agreed to as contained in the Bill.

141. National Social Security Fund vide a letter dated 25<sup>th</sup> February, 2021 forwarded a memorandum indicating that;

- a) It was in support of amending the National Social Security Fund Act (No.45 of 2013) to collect contribution remittance date to 9<sup>th</sup> of every month;
- b) Instead of effecting the changes by way of inserting a new paragraph under section 20, the committee considers amending section 27(1) (***penalty for default in payment and incorrect provisions***) which provides as follows;

*“ if any contribution for which a contributing employer is required to pay to the Fund is not paid within one month after the end of the month in which the last day of the contribution period to which it falls, a sum equal to five per cent of the amount of that contribution shall be added to the contribution for each month or part of a month that the amount due remains unpaid, and any such additional*

*amount shall be recoverable at the same time and in the same manner as the contribution to which it is added”*

- c) The proposed amendment in section 27(1) would be to delete the words “**within one month**” and substitute therefor the words “**by the ninth day**” as this is the appropriate section to enable employers read the provision for payment and penalty hand in hand.

142. **Committee observations:** The Committee observed that;

- a) The proposed date of ninth of every the month is the proposed date for remittance of other statutory payroll deductions including the PAYE and NHIF contributions through the Kenya Revenue Authority’s Unified Payroll Return. This will result in reduction of attendant costs of remittance of funds to different institutions hence contributing to ease of doing business in the country;
- b) The NSSF Act provides that the time and manner of payment for self-employed contributions is to be prescribed by the Cabinet Secretary in regulations. However the Act is silent on the exact date for remittance of mandatory contributions under section 20 (for employed contributors). As it is presently, the Act grants a grace period of one month within which employers are to remit the contributions.
- c) The Act prescribes a penalty that applies one month after the end of the month for which contributions relate. The penalty provision may therefore be amended to reflect the proposed prescribed remittance date. The penalty would apply to contributions remitted after the 9<sup>th</sup>. This is a consequential amendment which will give effect to the law and ensure compliance by clarifying the penalty provision. It is also akin to the provisions of the NHIF Act which contains provisions on health insurance, one of the components of Social Protection alongside Social Security.

143. **The Committee recommendation:** The Committee recommends that Clause 13 of the Bill be amended as follows-

That the Bill be amended by deleting clause 13 and substituting therefor the following new clause 13-

“The National Social Security Fund Act is amended-

(a) in section 20 by inserting the following new sub-section immediately after sub-section (1) -

*(1A) “An employer shall pay the contribution under subsection (1) on the ninth day of each month or on such later date as the Board may, in consultation with the Cabinet Secretary, prescribe”.*

(b) in section 27 by deleting the words “*within one month after the end of the month in which the last day of the contribution period to which it falls*” appearing in sub-section 1 and substituting therefor the following “*on or before the day on which the payment in respect of any month is due*”



## DPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

144. The Committee considered the proposed amendments to the Stamp Duty Act (Cap 480) in clause 4 of the Bill

### Clause 4

Section 17 of the Stamp Duty Act is amended by inserting the following new paragraph immediately after paragraph (o) —

*“Fixed duty of one hundred shilling charged on contract be chargeable as conveyance on sale under section 49”.*

145. The Committee received one memorandum from the Kenya Association of Stockbrokers and Investment Banks (KASIB) and Nairobi Securities Exchange (NSE) proposing that section 10 of the Stamp Duty Act should be amended as follows: -

*“Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of collecting Stamp Duty for marketable securities for any year of income ending on or before 31<sup>st</sup> December 2021”.*

146. **Committee observations:** The Committee observed that the amendment proposed by KASIB and NSE has an effect on revenue and it is therefore important to carry out a proper analysis on how much revenue will be lost if marketable securities are exempt from Stamp Duty before a decision is made on their proposal. Consequently, the Committee resolved that this proposal will be considered at a later date and recommends that clause 4 of the Bill be agreed to as contained in the Bill.

## DEPARTMENTAL COMMITTEE ON HEALTH

147. The Committee considered the proposed amendments to the National Hospital Insurance Fund Act, 1998 in clause 5 of the Bill.

### Clause 5

Section 15 of the National Hospital Insurance Fund Act is amended in sub-section (4) by deleting the word "*first*" and substituting it thereafter with the word "*ninth*".

148. The Committee did not receive any written submissions from the public in regards to the proposed amendment however, met with the Chief Executive Officer and other officials of the National Hospital Insurance Fund on Friday 26<sup>th</sup> February, 2021 who submitted that the National Hospital Insurance Fund was in agreement with the amendment as proposed in the Bill.

149. **Committee observations and recommendation:** The Committee observed that the amendment was necessary to facilitate the government's agenda of ease of doing business and further that the proposed amendment would serve in harmonizing payroll deductions through the Unified Payroll Return as is to be implemented by the Kenya Revenue Authority. The Committee recommends that the proposed amendment to the National Hospital Insurance Fund Act, No. 9 of 1998 in clause 5 of the Bill as proposed in the Business Laws (Amendment) (No. 20) Bill, 2020 be agreed to as contained in the Bill

## DEPARTMENTAL COMMITTEE ON LANDS

150. The Committee considered the proposed amendments to the Land Registration Act (No.3 of 2012) in clauses 8 to 12 of the Bill.

**Clause 8:** Section 54 of the Land Registration Act is amended—

- (a) in sub-section (1), by deleting the words "*the lessee*" appearing immediately after the words "*express or implied, by* " and substituting therefore the words "*the lessor*",
- (b) in sub-section (2), by deleting paragraph (c)

151. **Committee observation on the proposed amendment in clause 8:** The Committee observed that import of the amendment is to create clarity that it is the responsibility of the lessor to register a lease agreement. The amendment also deletes reference to section 39(4) of the Land Registration Act which was deleted in the Business Laws (Amendment) Act, 2020.

**Clause 9:** The Land Registration Act is amended by repealing section 55 and replacing it with the following section 55 –

- (1) "*If a lease contains a condition, express or implied, by the lessor that the lessee shall not transfer, sub-let, charge or part with the possession of the land leased or any part of it without the written consent of the lessor, the dealings with the lease shall not be registered unless the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar.*
- (2) *The Registrar shall not register any instrument purporting to transfer or create any interest in that land*".

152. **Committee observation on the proposed amendment in clause 9:** The Committee observed that comparing the amendment with the existing section 55, the import of the amendment is to do away with the need for a land rent clearance certificate certifying that no rent is owing to the Commission in respect of the land.

**Clause 10:** The Land Registration Act is amended by inserting the following new section immediately after section 55—

*55A "Notwithstanding any contrary government leases condition contained in the lease, the Registrar shall dispense with the production of the written consent of the lessor under section 54 and 55 in respect of a lease where the government is the lessor, before any dealing with the lease is registered".*

153. **Committee observation on the proposed amendment in clause 10:** The Committee observed that the amendment seeks to remove the need to obtain the written consent of the lessor before a lease is registered where the Lessor is the Government.

**Clause 11:** Section 56 of the Land Registration Act is amended—



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

*(1) “A proprietor may by an instrument, in the prescribed form, charge any land or lease to secure the payment of an existing, future or a contingent debt, other money or money's worth, or the fulfilment of a condition and, unless the chargee's remedies have been by instrument, expressly excluded, the instrument shall, contain a special acknowledgment that the chargor understands the effect of that section, and the acknowledgement shall be signed—*

*(a) by the chargor,*

*(b) where the chargor is a corporation, by the person attesting the affixation of the common seal, or*

*(c) where the chargor is a company incorporated under the Companies Act, in accordance with section 37 of the Companies Act”.*

**Clause 11** further amends the Act by deleting sub-section (4) and substituting therefor the following new sub-section—

*(3) “The registrar shall not register a charge unless the consent to charge has been presented”.*

(4) by inserting the following new sub-section immediately after sub-section (4)—

*(4A) “Notwithstanding any contrary condition contained in the lease, the Registrar shall register a charge in respect of a lease where the government is the lessor without presentation of a consent to charge”.*

by deleting subsection (5A)

**154. Committee observations on the proposed amendment in clause 11:** The Committee observed that: -

- a) The amendment seeks to align the Act with the amendment made to section 37 of the Companies Act, 2015 which did away with the need for a company seal. Section 37 of the Companies Act provides that a document shall be validly executed by a company if it is signed on behalf of the company by two authorised signatories or by a director of the company in the presence of a witness who attests the signature.
- b) The import of the amendment is to do away with the requirement that the Registrar shall not register a charge, unless a land rent clearance certificate has been presented.
- c) Further the amendment is to do away with the requirement that the Registrar shall not register a charge, unless consent to charge has been presented where the lessor is the government.

- d) is a consequential amendment as a result of doing away with the need for a land rent clearance certificate before a charge is registered.

**Clause 12:** Section 64 of the Land Registration Act is amended in subsection (2) by—

- (a) deleting the words "*sealed with the common seal of the company*" appearing immediately after the words "*entered under sub-section (1)*" and substituting therefor the words "*executed in accordance with section 37 of the Companies Act, 2015*", and (b) deleting the words "*in the case of a company not required by law to have a common seal*"

155. **Committee observations on the proposed amendment in clause 11:** The Committee observed that the amendment seeks to align the Act with the amendment made to section 37 of the Companies Act, 2015 which did away with the need for a company seal.

156. The Committee received submissions on the proposed amendments to the Land Registration Act No. 3 of 2012 from the Ministry of Lands and Physical Planning the National Land Commission as follows-

157. The Ministry of Lands and Physical Planning submitted that;

- a) The Business Laws (Amendment) Act, 2020 was assented into law and came into force on March 18, 2020. The aim of the Act was to amend various statutes to facilitate the ease of doing business in Kenya. The Act inter-alia repealed Sections 38 and 39 of the Land Registration Act, 2012.
- b) Section 38 then compelled the registrar not to register any transaction touching on any parcel of land within a rating authority unless a certificate of payment of rates is issued by a rating authority certifying that rates and other charges have been paid. On the other hand, section 39 equally bound the registrar not to register any transfer or create an interest in land unless a rent clearance certificate was produced certifying that no rent is owing to the National government or the County government.
- c) Section 39 also required that necessary consents issued by the National or County government be produced before a registrar registers any transaction in respect of any parcel of land. The amendment sought to reduce the time and cost incurred in during the registration process.
- d) The Act however did not address sections 55 and 56 of the Land Registration Act, which still require production of rent clearance certificates in respect of leases and charges respectively. Consents required to be obtained in respect of leases and charges were also not addressed.
- e) The Bill seeks to remove the requirement for production of consent in respect of leases where the government is ordinarily required to issue consent in leases where the government is the lessor.



- f) The proposed amendments are premised on the fact that government is the custodian of all information pertaining to leases and therefore there is no need to require citizens to obtain consent based on the same information. Moreover, access to information by the registrar shall be made easier and real-time courtesy of the National Land information Management System that the Ministry is about to launch any time now.
- g) Further, the Bill seeks to align sections 56 and 64 of the Land Registration Act with section 37 of the Companies Act (Cap. 480) concerning execution of documents by companies incorporated under the Companies Act as amended by the Business Laws (Amendment) Act, 2020.

158. The National Land Commission submitted as follows-

- a) Under clause 10 of the Bill which proposes to amend Land Registration Act No. 3 of 2012 by inserting new section 55A the Commission observed the need for consent by the government is to ensure that the original intentions of the lease remain and if they are to change the lessor's consent should be sought.
- b) The Commission further submitted that the ease of doing business should not negate the purpose for which government allocates land. It opined that not all land that is leased out by government is for commercial purposes and this may include land allocated to institutions for social and spiritually well-being of the society, controlled land in terms of section 12A of the Land Act, 2012 which requires the Cabinet Secretary to give consent for any transaction in controlled land and land near critical security installations.
- c) The Commission proposes that the amendment either be shelved to pave way for administrative action to ensure that requests for consent to transfer are expeditiously handled. Alternatively, the amendment be retained subject to the following transactions being exempted from those transactions that the consent can be dispensed with;
  - i) land allocated to institutions for social and spiritually well-being of the society;
  - ii) controlled land in terms of section 12A of the Land Act, 2012; and
  - iii) land near critical security installations.
- d) Under clause 11 of the Bill which proposes to amend section 56 of the Land Registration Act No. 3 of 2012, the Commission noted that the amendment gives the chargee sweeping powers including the power of sale in case of default by a borrower or guarantor and therefore this is a crawl back to the gains to Matrimonial Property and Children Act as it shall lead to legal challenges by chargees.
- e) The Commission supports the proposed amendment to section 64 of the Land Registration Act No. 3 of 2012 in clause 12 of the Bill as it eliminates the need for the common seal hence enhancing faster execution of documents.



159. **Committee observations on the submissions:** The Committee having considered the Bill and submissions by the Ministry of Lands and Physical Planning the National Land Commission observed that;

- a) The amendments in the Bill seek to facilitate the ease of doing business and they are further amendments to the amendments passed in the Business Laws (Amendment) Bill, 2019 now an Act of Parliament.
- b) The Bill seeks to align the Land Registration Act, 2012 with the Business Laws (Amendment) Bill, 2019 which did away with the need for certificates of land rent and rates in order to facilitate the ease of doing business.
- c) The proposed amendments contained in the Bill also seek to align the Land Registration Act, 2012 with the amendment effected in section 37 of the Companies Act through the Business Laws (Amendment) Bill, 2019 which dispensed with the need for a common seal in execution of documents.
- d) The Bill if enacted shall facilitate the ease of doing business as it eliminates the need to obtain the written consent of the lessor for the lessee to charge or sub-let land where the Government is the lessor as a conditional precedent for registration of any dealing or transaction relating to land.
- e) The Committee also noted that the proposed amendments to do away with the written consent of the lessor for the lessee to charge or sub-let land is only in relation to transactions where the Government is the lessor and hence the requirements shall continue to apply in the ordinary processes and transactions between a lessor and a lease.
- f) The Committee observed that dispensing with the need for the written consent of the lessor for the lessee to charge or sub-let land where the Government is the lessor may lead to loss of public land through fraudulent transactions and in cases of default in payment through the exercise of power of sale by a chargee where there exist credit facilities.
- g) The Committee however observed that the Registrar is the custodian of all information relating to registration of leases where the Government is the Lessor and hence there would be no need to ask for the same information from the Government as a conditional precedent for the Registrar to register any lease or charge document.

160. **Committee recommendations:** the Committee recommends that clauses 8, 9, 10, 11 and 12 of the Bill be agreed to as contained in the Bill.

## DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

161. The Committee the proposed amendments to the National Construction Authority Act No. 41 of 2011 in clauses 6 and 7 of the Bill.

162. The Committee received both written and oral submissions on the proposed amendments to the National Construction Authority Act, 2011 from the Ministry of Transport, Infrastructure, Housing Urban Development and Public Works and Engineers Board of Kenya submitted as follows;

163. The Ministry of Transport, Infrastructure, Housing Urban Development and Public Works submitted that;

- a) The proposed amendments are welcome given the role of the National Construction Authority in regulating the construction industry which in turn plays a critical part in the determination of ease of doing business.
- b) The Local Government Act upon which the National Building Code, 1968 was anchored was repealed by the County Governments Act, 2012 and no specific mention of the Code was made in the latter Act. The Code has therefore remained unanchored on any law and this has resulted in implementation challenges.
- c) Article 94(6) of the Constitution as read together with Statutory Instruments Act, 2013 means there is need to properly anchor the National Building Code in a specific statute.
- d) The State Department recommends that in addition to the proposed amendments, the National Construction Authority Act, 2011 be further amended by: -

*“Inserting a new definition of the term “Building Code” to mean the National Building Regulations issued under the Act; and*

Amend section 42(2) of the Act to give the Cabinet Secretary the power to prescribe the Building Code”.

164. Engineers Board of Kenya also submitted that;

- a) The new section being inserted under section 7, (Section 22A, (3)(c) should be amended by adding a provision to give respective regulators of the relevant professionals, Engineers Board of Kenya, the prerogative to receive reports of inquiry into defects of a building for their further remedial action.
- b) There’s need to co-opt representation from the relevant regulators in the inquiries conducted by the Authority.
- c) The amendments as proposed do not address any lacuna in law regarding the engineering professional services as the legal framework is robust and adequate



165. **Committee observations:** The Committee observed that;

- a) The proposed definition of the term “defect” does not take into account the default-liability period which applies to architects and engineers. Additionally, it does not prescribe the time period within which a registered professional may be held liable for a defect in a building;
- b) The proposal does not address the issue of more than 4,000 “defective” buildings said to be currently existing in the country;
- c) The proposal expands the regulatory powers of the National Construction Authority to other professionals without amending the laws governing those professionals;
- d) The proposal is limited only to defects in buildings yet defects affect all categories of works. It needs to be expanded to cover all other categories of construction works;
- e) The Ministry which originated the proposal failed to demonstrate that it conducted adequate public participation before its submission of the proposal. The proposal requires specific input from the persons and bodies affected by its implications. These include the regulatory bodies and professional associations of architects and engineers;
- f) The proposal focuses on prescribing punishment for contractors and other professionals for defective buildings. It fails to address its objective of improving the ease of doing business by establishing standards to govern construction works; and
- g) The proposal as currently crafted does not contain adequate safeguards against the arbitrary use of inquiries to victimize contractors and other professionals in the construction sector.

166. **Committee recommendations:** Having considered the proposed amendments to National Construction Authority Act, 2011 as contained in the Bill, 2020 and memoranda the Ministry of Transport, Public Works and Housing and Engineers Board of Kenya the Committee recommends that the proposed amendments to the National Construction Act, 2011 contained in clauses 6 and 7 of the Bill be **rejected**.

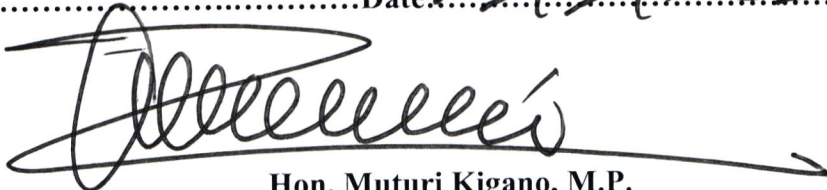


CHAPTER SIX

6.0 COMMITTEE RECOMMENDATION

167. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders, proposes that the Business Laws (Amendment)(No.2) Bill, (National Assembly Bill No.50 of 2020) be passed as per the recommendations contained in Chapter five of the report

Signed.....Date 23/3/2021



Hon. Muturi Kigano, M.P.  
Chairperson, Departmental Committee on Justice and Legal Affairs

# **ANNEXURE 1**

## **Minutes of the Committee**

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**MINUTES OF THE FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY 19<sup>TH</sup> MARCH, 2021 AT 9:30 AM IN MEETING HALL, WINDSOR GOLF HOTEL & COUNTRY CLUB**

**PRESENT-**

- |   |   |                         |
|---|---|-------------------------|
| 1. Hon. Clement Muturi Kigano, M.P.     | - | <b>Chairperson</b>      |
| 2. Hon. (Dr.) Paul Otiende Amollo, M.P  | - | <b>Vice Chairperson</b> |
| 3. Hon. John Olago Aluoch, M.P.         |   |                         |
| 4. Hon. William K. Mwamkale, M.P        |   |                         |
| 5. Hon. Josephine Naisula Lesuuda, M.P. |   |                         |
| 6. Hon. Robert Gichimu Githinji, M.P    |   |                         |
| 7. Hon. Adan Haji Yussuf, M.P           |   |                         |
| 8. Hon. Jennifer Shamalla, M.P.         |   |                         |
| 9. Hon. George G. Murugara, M.P         |   |                         |
| 10. Hon. Anthony G. Kiai, M.P.          |   |                         |
| 11. Hon. Japheth Mutai, M.P.            |   |                         |
| 12. Hon. Anthony Oluoch, M.P.           |   |                         |
| 13. Hon. John M. Wambugu, M.P.          |   |                         |

**ABSENT WITH APOLOGIES-**

1. Hon. Emmanuel Wangwe, M.P.
2. Hon. Junet Sheikh Nuh Mohamed, M.P
3. Hon. Peter Opondo Kaluma, M.P.
4. Hon. Zuleikha Hassan, M.P.
5. Hon. John Kiarie Waweru, M.P.
6. Hon. Roselinda Soipan Tuya, M.P.

**IN ATTENDANCE-**

1. Mr. Abenayo Wasike
2. Mr. Denis Abisai
3. Mr. Ahmed Odhwa
4. Ms. Halima Hussein
5. Ms. Roselyne Ndegi

**COMMITTEE SECRETARIAT-**

- |   |                           |
|---|---------------------------|
| - | Principal Clerk Assistant |
| - | Principal Legal Counsel   |
| - | Principal Research Office |
| - | Second Clerk Assistant    |
| - | Sergeant At Arms          |

**MIN No.JLAC/ 01/2021:-**

**PRELIMINARIES**

The meeting was called to order at 9:40 a.m with a word of prayer by the Chairperson and the agenda was adopted as filed after a proposal by Hon. Adan Haji and seconded by Hon William Kamoti.



**MIN No.JLAC/ 02/2021:-**

**CONSIDERATION OF THE BUSINESS  
LAWS (AMENDMENT) BILL, 2020**

The Committee was taken through the Business Laws (Amendment) (No.2) Bill, 2020 clause by clause and made the following observations that;

- a) The amendment proposed in clause 1 of the Bill sought to recognize as properly signed any documents validly executed by body corporates under section 37 of the Companies Act, No. 17 of 2015 and not as expressed in the Memorandum of Objects and Reasons of the Bill.
- b) Most of the proposed amendments to the Companies Act, No. 17 of 2015 in clauses 14, 15 and 16 sought to expand the definition of a company 'general meeting' in order to enable companies to hold meetings physically, virtually or through hybrid method.
- c) Most of the proposed amendments to the Insolvency Act, No. 18 of 2015 sought to correct technical drafting errors in the Act.
- d) The proposed amendment to section 34 of the Small Claims Court Act, No. 2 of 2016 sought to provide for a timeline of sixty days within which the small claims must be heard and determined. The Committee, however, observed that the amendment was misplaced and was not in harmony with the existing sub-section (2) which provides that the judgment shall be delivered on the same day after the hearing and in any event not later than three days from the date of hearing.

**MIN No.JLAC/ 03/2021:-**

**CONSIDERATION AND ADOPTION  
OF THE REPORT ON THE BUSINESS  
LAWS (AMENDMENT) BILL, 2020**

The Committee considered its report on the Business Laws (Amendment) (No.2) Bill, 2020 and unanimously adopted it with recommendations. The adoption of the report was proposed by Hon. Otiende Amollo and seconded by Hon. Japheth Mutai.

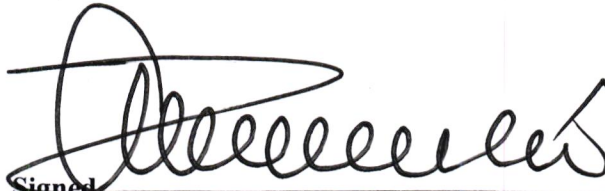
Clause 60 of the Bill on the proposed amendment to section 34 of the Small Claims Court Act, No. 2 of 2016 be amended by deleting it and substituting therefore the following new clause;

*Amendment of 60. Section 34 of the Small Claims Court Act is amended in sub-section section 34 of No. 2 (1) by inserting the words 'of the matter which shall be within sixty days of 2016 from the date of filing the claim' immediately after the word 'determination' appearing at the end of the sub-section.*

MIN No.JLAC/ 05/2020:

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 10:50 am.

  
Signed.....  
Chairperson

Date..... 23/3/2021

# **ANNEXURE 2**

## **Members Adoption List**



KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

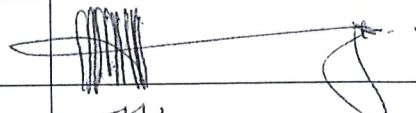
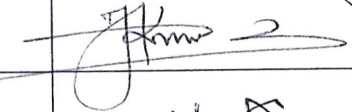
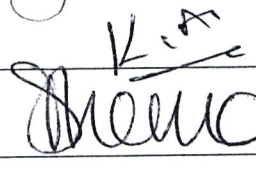
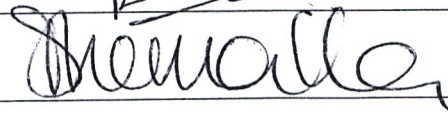


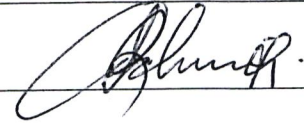
ATTENDANCE REGISTER FOR MEMBERS

DATE 19/3/2021 START TIME 9:40 A.M END TIME 10:30am

VENUE WINDSOR

AGENDA Consideration & Adoption of the report on the Business Law (Amendment) Bill, 2020

NO.	NAME	SIGNATURE
	Hon. Clement Muturi Kigano, M.P. -Chairperson	
	Hon. (Dr.) Paul Otiende Amollo, M.P -Vice-Chairperson	
	Hon. Emmanuel Wangwe, M.P.	
	Hon. Junet Sheikh Nuh Mohamed, M.P	
	Hon. John Olago Aluoch, MP.	
	Hon. Peter Opondo Kaluma, MP.	
	Hon. Roselinda Soipan Tuyu, MP.	
	Hon. Mwamkale Kamoti, MP.	
	Hon. Zuleikha Hassan, MP.	
0.	Hon. Josephine Naisula Lesuuda, M.P.	
1.	Hon. George Gitonga Murugara, MP.	

12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	
19.	Hon. Robert Gichimu Githinji, M.P.	

**COMMITTEE CLERK**

  
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19/3/2020

**DIRECTOR COMMITTEE SERVICES**

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## **ANNEXURE 3**

Newspaper advisement for public participation



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## REPUBLIC OF KENYA


**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT (FIFTH SESSION)**
**INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA**

**SUBJECT: THE BUSINESS LAWS (AMENDMENT) (NO.2) BILL, 2020 (National Assembly Bill No. 50 of 2020)**  
*(Article 118 (1)(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders*

**In the matter of consideration by the National Assembly: The Business Laws (Amendment) (No.2) Bill, 2020**

The Business Laws (Amendment) No.2 Bill, 2020 (National Assembly Bill No. 50 of 2020) was published on 14<sup>th</sup> December, 2020 and read a First Time on Tuesday, 22<sup>nd</sup> December, 2020. The Bill proposes amendments to various statutes to facilitate the ease of doing business in Kenya follows—

**The Law of Contract Act (Cap. 23)**

The Bill seeks to amend the Act to eliminate the requirement of a company seal in execution of documents for companies registered under the Companies Act, No. 17 of 2015.

**Industrial Training Act (Cap. 237)**

The Bill seeks to amend the Act to provide for the payment of the training levy to be remitted at the end of a business's financial year but not later than the ninth day of the month following end of the financial year.

**Stamp Duty Act (Cap. 480)**

The Bill seeks to amend the Act to exempt payment of fixed stamp duty of one hundred shillings on contracts for purposes of reducing the cost of doing business.

**National Hospital Insurance Fund Act, 1998**

The Bill seeks to amend the Act to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.

**National Construction Authority Act, 2011**

The Bill seeks to amend the Act to provide for power of the Board to inquire into defects in a building to establish the cause of the defects in terms of structural defects and latent defects and the liability on the part of a registered person.

**Land Registration Act No. 3 of 2012**

The Bill seeks to amend the Act to eliminate the use of company seals in execution of documents by companies incorporated under the Companies Act, 2015, eliminate the requirement to submit Land Rent and Rate Clearance Certificate and Consents in other land transactions.

**National Social Security Fund Act, 2013**

The Bill seeks to amend the Act to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.

**Companies Act No. 17 of 2015**

The Bill seeks to amend the Act to eliminate the use of a company seal in operations of companies incorporated under the Companies Act. It also seeks to make amendments to facilitate companies to hold meetings through hybrid or virtual sittings.

**Insolvency Act No. 18 of 2015**

The Bill seeks to amend the Act to clarify that an administrator can distribute routine payment to unsecured creditors without courts permission. It also seeks to introduce a pre-insolvency moratorium period to prevent creditors from taking an enforcement action while a company considers its option for rescue.

**Small Claim Courts Act, 2016**

The Bill seeks to amend the Act to make provision to fast track procedure for small claims by providing a sixty-day timeline for adjudication of small claims.

Pursuant to the provisions of Standing Order 127(1) of the National Assembly Standing Orders which provides that a Bill having been read a First Time shall stand committed to the relevant Departmental Committee, the proposed amendments to various Acts of Parliament stand committed to the following Departmental Committees of the National Assembly —

No.	ACT TO BE AMENDED	COMMITTEE
1.	The Law of Contract Act (Cap 23)	Justice and Legal Affairs
2.	The Companies Act No. 17 of 2015	
3.	The Insolvency Act No. 18 of 2015	
4.	The Small Claims Court Act (No.2 of 2016)	
5.	The Industrial Training Act (Cap. 237)	Labour and Social Welfare
6.	The National Social Security Fund Act (No.45 of 2013)	
7.	The Stamp Duty Act (Cap 480)	Finance and National Planning
8.	National Hospital Insurance Fund Act, 1998	Health
9.	Land Registration Act (No.3 of 2012)	Lands
10.	The National Construction Authority Act No. 41 of 2011	Transport, Public Works and Housing

Now therefore, pursuant to the provisions of Article 118 (1)(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders respectively, the Clerk of the National Assembly invites interested members of the public and organisations to submit any views or make representations regarding the Bill.

The views, representations or written Memoranda may be forwarded to the **Clerk of the National Assembly, P.O Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before, **Friday 26<sup>th</sup> February, 2021 at 5:00 pm**. Thereafter the Clerk of the National Assembly shall forward the views, representations or written Memoranda received to the relevant Committee for consideration. The Bill may be found on the Parliament website at <http://www.parliament.go.ke>, or <http://www.kenyalaw.org>.

**MICHAEL SIALAI, EBS**  
**CLERK OF THE NATIONAL ASSEMBLY**

12<sup>th</sup> February, 2021

*"For the Welfare of Society and the just Government of the People"*  
*"The National Assembly speaks for you, Our results speak for themselves"*

# **ANNEXURE 4**

## **Stakeholder's submissions**





Office of The Attorney General and Department of Justice  
**BUSINESS REGISTRATION SERVICE**

*Ease of Doing Business*

Our ref: OR/EDB/2019


18<sup>th</sup> March, 2021

The Chair,  
Departmental Committee on Justice & Legal Affairs  
The National Assembly,  
Parliament Buildings,  
P.O BOX 41842-00100  
NAIROBI

RE: AMENDMENTS TO THE INSOLVENCY ACT UNDER THE BUSINESS LAWS (AMENDMENT) (NO.2) BILL, 2020

I refer to the above and the meeting yesterday between your Mr. Dennis Abisai, Legal Clerk and our Ms. Beatrice Osicho, Deputy Official Receiver and Ms. Diana Mumo, Senior Assistant Official Receiver.

Following the discussions, I now attach explanatory notes\* on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.

  
Kenneth Gathuma  
DIRECTOR GENERAL

\*Encls

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2016 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

474	Share of assets to be made available for unsecured creditors where floating charge relates to company's property.	Deletion of 'Part XXIV' after 'under' and deletion of '(which deals with to arrangements and reconstructions)' after '2015' in paragraph (4)(b)	<ul style="list-style-type: none"> <li>- This correction removes the specific reference to the Companies Act, to avoid amending this Act in case the Companies Act 2015 is amended.</li> </ul>
		Inserting 'or' after 'benefits;' in paragraph (5)(a)	<ul style="list-style-type: none"> <li>- The insertion corrects the grammatical error</li> </ul>
		Inserting new paragraph (5)(b)	<ul style="list-style-type: none"> <li>- This insertion allows a floating charge holder dissatisfied with the apportionment of the net assets secured under a floating charge to be made available to the unsecured creditors, to apply to court for relief.</li> </ul>
		Inserting 'or is to apply subject to whatever conditions the court thinks just' after apply in new paragraph (5)(c)	<ul style="list-style-type: none"> <li>- The insertion under subsection 5(c) widens the discretion of the court.</li> </ul>
Part IXA	Pre-Insolvency Moratorium	Deletion of the sub title "Division 2 – Moratoria on debt payments when company's directors propose voluntary arrangement" and substituting it with "Part IXA - Pre-Insolvency Moratorium"	<ul style="list-style-type: none"> <li>- The deletion and substitution mirrors the changes made in that part.</li> </ul>
636	Interpretation	Substituting 'Division 2' with 'Part IXA' in the marginal notes  Deleting the word 'subdivision' and replacing it with 'division' in the sub title.  Deletion of the definition of the word "proposal" and substituting it with a new	<ul style="list-style-type: none"> <li>- The deletion and substitution clarify the cross referencing of the sub headings.</li> <li>- The deletion and substitution clarify the cross referencing.</li> <li>- The insertion makes provision for</li> </ul>

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

			definition "monitor"	<p>appointment of a monitor, who is an Insolvency Practitioner before his confirmation upon appointment.</p> <p>It is also for consistency as the monitor has replaced the provisions supervisor.</p> <ul style="list-style-type: none"> <li>- The deletions are for purposes of simplifying the provision to make it easier for the Voluntary Arrangement to be adopted by the Creditors.</li> </ul>
637	Application of Part IXA	<p>Deletion of the definition of "moratorium committee and subsection (2)</p> <p>Deleting of the words 'Division 2' and substituting with 'Part IXA' in the marginal notes</p> <p>Deleting the words 'Division' and substituting it with 'Part' in the introductory statement</p> <p>Deleting paragraph 637(d)</p>	<ul style="list-style-type: none"> <li>- The deletion and substitution clarify the cross referencing of the sub headings in the marginal notes.</li> <li>- The deletion and substitution clarify the cross referencing.</li> <li>- The deletion simplifies the procedure for pre insolvency moratorium to be applied.</li> </ul>	
638	Eligible Companies	<p>Deleting the words 'Subdivision' and substituting it with the words 'Part; and' in paragraph 638(b)</p> <p>Inserting a new paragraph 638(c)</p>	<ul style="list-style-type: none"> <li>- The deletion clarifies the cross referencing.</li> <li>- The insertion of subsection (c) adds to the criteria of which companies qualify for a Pre-Insolvency Moratorium.</li> </ul>	
640	Companies under administration, etc. ineligible to obtain moratorium.	Deleting subparagraphs (1)(e)(i) & (ii)	<ul style="list-style-type: none"> <li>- The deletion is because the two paragraphs were a repetition of sub paragraph (g) and for purposes of simplifying the provision.</li> <li>- The deletion is because we have made</li> </ul>	



*Explanatory Notes on the amendments in relation to the Insolvency Act, 2016 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

		Companies Act'	provision for Administrative Receivers under the Act.
		Companies Act' Substitution of '(7)' with '(5)' after '630' in paragraph (1)(g) Deleting 'under the repealed Companies Act' after 'appointed' after paragraph (1)(h) Inserting ' : ' after 'date' in subsection (2)	<ul style="list-style-type: none"> <li>- This corrects the cross referencing.</li> <li>- The deletion corrects an error as there were no Administrative Receivers under the repealed Companies Act.</li> </ul>
642	Companies with Large outstanding liabilities ineligible.	Deleting the entire section	<ul style="list-style-type: none"> <li>- The deletion of the provision was because the provision was unfairly locking out companies with significantly large outstanding liabilities yet CVA's are contingent on their approval by the company's creditors.</li> </ul>
Division 2		Deleting the subtitle 'subdivision 2' and substituting it with 'division 2' in the title "Obtaining a moratorium"	<ul style="list-style-type: none"> <li>- The deletion is for purposes of correcting the subheading.</li> </ul>
643	What steps company's directors have to take to obtain a moratorium.	Deletion of subsection (1)	<ul style="list-style-type: none"> <li>- The deletion is to avoid repetition because subsection (2) has already made the provision, which is more specific.</li> <li>- The deletion and substitution is for purposes of setting out a criteria that the directors need to comply with in</li> </ul>
		Subsection 2(a) (i) is amended by deleting the words "the terms of the proposal" and substituting it with "why a moratorium is desirable... company"	

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

		<p>Subsection (2) (b) is amended by deleting the words ‘unless a provisional supervisor has already been appointed in respect of the proposal’</p> <p>Deletion of the words provisional supervisor and substituting it with the word “monitor” in subsections 2 (b), 4, 5 and 6.</p> <p>Subsection 3 is amended by deleting the words “After preparing the proposal and statement and, if appropriate, making the appointment” and further deleting the words “the proposal and statement to the provisional supervisor” and substituting it with “The directors shall submit the documents required under subsection (2) to the monitor for consideration and comment.”</p> <p>Subsection (5)(a) is amended by deleting the word ‘proposal’ and substituting it with ‘proposed moratorium’.</p> <p>Further, the same subsection is amended by deleting the words ‘being approved and implemented’ and substituting it with “achieving its aim”</p> <p>Deleting paragraph (5)(c) in its entirety “meetings of the company and its creditors should be convened with a view to considering and approving the proposal.”</p>	<p>order to obtain a moratorium.</p> <ul style="list-style-type: none"> <li>- This deletion does away with the repetition.</li> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- The deletion is for purposes of simplifying the provision.</li> <li>- The deletion and insertion is made for purposes of consistency.</li> <li>- The deletion is made to simplify the</li> </ul>
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		<p>Deletion of the word 'it' in subsection (7)</p>	<p>process. This is because a meeting with creditors would cause unnecessary delay. Further, this section is already catered for under s.643.</p> <ul style="list-style-type: none"> <li>- The deletion corrects the grammatical error.</li> </ul>
644	<p>What directors have to do to obtain moratorium.</p>	<p>Deleting the words 'proposal and statement' and substituting it with 'documents' in paragraph (1)(a)</p> <p>In paragraph (1)(c) &amp; (d) Deleting the words 'provisional supervisor' and 'supervisor' and substituting them with 'monitor'.</p> <p>Deleting the words 'proposed arrangement if approved' and substituting it with 'moratorium'</p> <p>Subsection (1) (d) (i) is amended by deleting the paragraph and substituting it with "the proposed moratorium has a reasonable prospect of achieving its aims"</p> <p>Subparagraph (1)(d)(iii) has been deleted in its entirety "meeting of the company and its creditors should be convened to consider the proposal"</p>	<ul style="list-style-type: none"> <li>- The deletion and insertion is for purposes of alignment with s. 643 (2)(a).</li> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- The deletion and insertion is for purposes of consistency and clarity.</li> <li>- The deletion and insertion is for purposes of clarity.</li> <li>- The deletion is made to simplify the process. This is because a meeting with creditors would cause unnecessary delay. Further, they have no role to play at this point.</li> </ul>
645	<p>Duration of moratorium.</p>	<p>Deleting paragraphs (2) &amp; (3) and substituting it with "A moratorium ends</p>	<ul style="list-style-type: none"> <li>- The deletion and insertion is made to simplify the provision and provide</li> </ul>



*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

			<p>after thirty days from and including the day on which the moratorium takes effect, unless the moratorium period is extended under section 669.”</p> <p>Deleting subsections (4), (6) &amp; (7)</p>	<p>clarity.</p> <ul style="list-style-type: none"> <li>- Deletion is made to remove the verbosity.</li> </ul>
646	<p>What happens when moratorium takes effect.</p>	<p>Deleting the words ‘provisional supervisor’ and substituting them the word ‘monitor’ in subsections (1) &amp; (3)</p> <p>Substituting ‘given’ with ‘give’ in subsection (3)</p>	<ul style="list-style-type: none"> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- This corrects the grammatical error.</li> </ul>	
647	<p>Duty of monitor to publish and give notice that moratorium has taken effect.</p>	<p>Deleting the words ‘provisional supervisor’ and substituting them with ‘monitor’ in subsections (1), (2) &amp; (3) and in the marginal notes</p> <p>Deleting subsection (1)(b) and substituting it with “give a notice to the effect that the moratorium has taken effect to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium; and”</p>	<ul style="list-style-type: none"> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- The justification for the insertion is because two insolvency procedures cannot run concurrently, especially where both procedures have a different outcome.</li> </ul>	
648	<p>Notification of end of moratorium to be given by monitor.</p>	<p>Deleting the words ‘provisional supervisor’ and substituting them with ‘monitor’ in subsections (1), (2) &amp; (3) and in the marginal notes.</p> <p>Deleting the words ‘of whose claim that supervisor is aware’ appearing in paragraph</p>	<ul style="list-style-type: none"> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- The deletion does away with the</li> </ul>	

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2016 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

		(1) (b) and substituting it with “who has applied for a liquidation order against the company before the coming into effect of the moratorium”	<ul style="list-style-type: none"> <li>- impracticality of serving all creditors since the provision has been dealt with by subsection 1.</li> <li>- The substitution makes provision for avoidance of concurrent proceedings.</li> </ul>
649	Effect of moratorium on creditors and others.	<p>Inserting the word ‘of’ in paragraph (1)(a)</p> <p>Deleting the words ‘provisional supervisor’ and substituting them with ‘monitor’ in subsection (1)(b)(i)</p> <p>Inserting a new paragraph (1)(fa) after paragraph (1)(f)</p>	<ul style="list-style-type: none"> <li>- This corrects the grammatical error.</li> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- The insertion makes provision for the avoidance of two insolvency procedures running concurrently especially where their outcomes are different.</li> </ul>
651	Security not to be enforced unless it would benefit the company.	<p>Deleting the words ‘or at a time referred to in section 666(5)(a)’ appearing in subsection (2)</p> <p>Substitution of ‘424’ with ‘426’ after ‘section’ in paragraph (4)(a)</p>	<ul style="list-style-type: none"> <li>- This corrects the cross referencing as the section has been done away with.</li> <li>- This corrects the cross referencing.</li> </ul>
653	Company invoices and other documents to state monitor	<p>Deletion of the words ‘enforcement of’</p> <p>Deleting the words ‘provisional supervisor’ and substituting them with ‘monitor’ in</p>	<ul style="list-style-type: none"> <li>- This corrects the grammatical error and provides clarity.</li> <li>- The deletion is for purposes of consistency with the Act.</li> </ul>

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

	name and that moratorium has effect.	subsection (1)(a) and in the marginal notes	
654	Restrictions on company obtaining credit during moratorium.	Inserting 's' to 'commit' in subsection (2) Inserting 's' to 'commit' in subsection (3)	- This corrects the grammatical error - This corrects the grammatical error
655	Restrictions on disposal of property and making payments by company.	Deleting the words 'moratorium committee or, if there is no such committee, by the provisional supervisor' and substituting them with the word 'monitor' in subsection (1)(b) Inserting 's' to 'commit' after 'default,' in subsection (3)	- The deletion is for purposes of simplifying the provision. - This corrects the grammatical error
656	Restriction on company paying debts and other liabilities.	Deleting the words 'moratorium committee or, if there is no such committee, by the provisional supervisor' and substituting them with the word 'monitor' in subsection (1)(b)	- The deletion is for purposes of simplifying the provision.
657 (2)	Circumstances in which company may dispose of property and goods that are subject to a security or held under credit purchase transaction.	Amended by deleting the words "to which this section applies" and substitutes it with the words "that is subject to a security"	- This insertion provides for clarity and precision.
657(3)		Amended by deleting the words "to which this section applies" and substitutes it with the words "in the possession of the company under a credit purchase transaction"	- This insertion provides for clarity and precision. Additionally, it distinguishes property that is subject to a security vis a vis one that is a credit purchase agreement.
658	Monitor to monitor activities of company during moratorium.	Deleting the words 'provisional supervisor' and 'supervisor'; and substituting them	- The deletion is for purposes of consistency as this division has



*Explanatory Notes on the amendments in relation to the Insolvency Act, 2016 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

		with the words “monitor” appearing in subsections (1), (2), (3), (5) and in the marginal notes.  Deleting paragraph (1)(a)	replaced provisional supervisors with monitors.  - The deletion does away with cross referencing since section 663 has been done away with.  - This corrects the cross referencing
659	Withdrawal of monitor’s consent to act.	Deleting the words ‘provisional supervisor’ and ‘supervisor’; and substituting them with the words “monitor” appearing in subsections (1), (3), (6), (7) and in the marginal notes.  Amended by deleting the entire subsection 5	- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.  - This deletion allows a monitor to vacate office as they wish. The earlier provision was dictatorial
660	Creditors and others may challenge monitor’s conduct during moratorium by application made to the Court.	Deleting the words ‘provisional supervisor’ and ‘supervisor’; and substituting them with the words “monitor” appearing in subsections (1), (3) and in the marginal notes.	- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.
661	Creditor may pursue claim against monitor for loss.	Deleting the words ‘provisional supervisor’ and ‘supervisor’; and substituting them with the words “monitor” appearing in subsections (1), (3) and in the marginal	- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.

*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

	notes.		
662	<p>Replacing the words 'provisional supervisor' and 'supervisor'; and substituting them with the words "monitor" appearing in subsections (1), (3) and in the marginal notes.</p> <p>In subsection (1)(a) by deleting the word 'Division' and substituting it with the word "Part"</p> <p>Amended by deleting the expression (3) and substituting it with the expression (2) in subsection 1</p>	<p>Replacement of provisional supervisor by the Court.</p>	<ul style="list-style-type: none"> <li>- The deletion is for purposes of consistency as this division has replaced provisional supervisors with monitors.</li> <li>- This corrects the cross referencing.</li> <li>- This corrects the cross referencing.</li> </ul>
Sections 663 – 668	<p>Deletion of Subdivision 5 – Consideration of proposal for and implementation of voluntary arrangement and its provisions</p>	<p>Consideration of proposal for and implementation of voluntary arrangement and its provisions</p>	<ul style="list-style-type: none"> <li>- The deletion is for purposes of doing away with the repetition.</li> <li>- Additionally, there is no need to call for meetings at this stage.</li> <li>- This deletion is made for purposes of flow as the sections are misplaced.</li> </ul>
Division 5	<p>In the sub title, deleting 'Subdivision 6' with and substituting it with 'Division 5'.</p>		<ul style="list-style-type: none"> <li>- This corrects the cross referencing.</li> </ul>
669	<p>Deleting subsections 1 to 7 and substituting the same with a new section "On the application of the directors, the Court may extend a moratorium for a period of 30 days (or further periods of 30 days) if the Court believes that the extension is desirable in order to achieve the aims for which the moratorium was initially obtained under section 643"</p>	<p>Circumstances in which moratorium may be extended.</p>	<ul style="list-style-type: none"> <li>- The deletion and substitution provides for clarity and simplifies the section.</li> </ul>

*Explanatory Notes on the amendments in relation to the Insolvency Act, 20. that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

670	Conditions for extension of moratorium.	Deleting the words 'provisional supervisor' and 'supervisor'; and substituting them with the words 'monitor' appearing in subsections (1) & (2)  Deleting subsection 3	<ul style="list-style-type: none"> <li>- The deletion and substitution is for purposes of consistency as the term provisional supervisor has replaced with monitors.</li> <li>- The deletion and substitution provides for clarity and simplifies the section. There is no need to call for meetings at this stage.</li> </ul>
671	Decisions to extend or further extend moratorium.	Deleting subsection (1) and substituting it with "If the Court extends, or further extends, the moratorium, the monitor shall within seven days of the order, lodge a copy of the order with the Registrar for registration."  Deleting subsection (2)  Deleting the words 'provisional supervisor' & 'supervisor' and substituting it with 'monitor' in subsections (3) and (4)	<ul style="list-style-type: none"> <li>- The deletion and substitution provides for clarity and simplifies the section.</li> <li>- The deletion does away with repetition.</li> <li>- The deletion and substitution is for purposes of consistency as the term provisional supervisor has replaced with monitor.</li> </ul>
672	Meeting of company or creditors may establish moratorium committee	Deleting entire section	<ul style="list-style-type: none"> <li>- The deletion is for consistency because the moratorium committee role has been done away with. Further, there is no need to call for meetings at this stage.</li> </ul>



*Explanatory Notes on the amendments in relation to the Insolvency Act, 2015 that are incorporated in the Business Laws (Amendment) (No 2) Bill, 2020.*

673	Effect of certain decisions of meetings of company and company's creditors.	Deleting entire section	<ul style="list-style-type: none"> <li>- The deletion is for consistency because the meeting of the company and its creditors' has been done away with.</li> </ul>
674	Member or creditor of company may challenge actions of directors.	Amended by inserting the term "unfairly"	<ul style="list-style-type: none"> <li>- This insertion has been made for purposes of clarity.</li> </ul>



**OFFICE OF THE CHAIRMAN**

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1<sup>st</sup> NGONG AVENUE  
P.O BOX 44417-00100  
NAIROBI

OUR REF: **NLC/1/7/13**

**10<sup>th</sup> March, 2021**

Michael R. Sialai, EBS  
Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**

Dear *Mr. Sialai,*

**THE BUSINESS LAWS (AMENDMENT) (No 2) BILL 2020 (NATIONAL ASSEMBLY BILL NO. 50)**

We make reference to the above subject matter and take the opportunity to submit our views on the Business Laws (Amendment) Bill 2020. We agree with the purpose of the proposed amendments which is to improve the business environment by making transactions faster, convenient and cost effective.

Upon studying the Business Laws (Amendment) Bill, we note that the clauses in the proposed amendment that affect the Commissions' mandate are Clause 8 to 12 that seek to amend the Land Registration Act No. 3 of 2012. Notably, section 9 and 10 propose to amend section 55 and 56 of the Land Registration Act.

The Commission wish to make the following observations and proposals in line with the Constitution, Legislation, National Land Policy, Best Practice and other Government Policies and Directives:

**OBSERVATIONS/ PROPOSALS**

**1. Proposed insertions of section 55A**

Section	Proposed insertions of a new subsection
10	Notwithstanding any contrary condition in the lease, the registrar shall dispense with the production of written consent of the lessor under section 54 and 55 in respect of a lease where the Government is the lessor, before any dealing with the lease is registered.

The nature of dealing that require consent include transfers and subdivision. The need for consent by Government is to ensure that the original intentions of the lease arrangement remain and if they are to change then the lessor's consents needs to be first obtained. Consents are therefore instruments that implement the management function of the Commission under Article 67 (2)(a). It is through consents that the government ensures that land is allocated and used for the intended purpose and hence consents are tools for development control and deterrents for speculative acquisition of public land. Also consents allow the government to ensure other legal provisions are taken into consideration during land dealings for example, adherence to Matrimonial Property Act, Planning and land use Act to limit Urban sprawl and effects of on agricultural land during subdivisions.

Ease of doing business should not negate the purpose to which government whether at national or county level allocate land. Besides access for land for shelter, livelihood and business promotion, there is the core aspect of revenue generation. This is in the form of rates and rents which is key to county governments. It is during issuance of consents that allottees are forced to pay any public debt before transacting with the land. To state that public debts can be passed on to a third party during transaction is to assume too much without due mechanisms of ensuring conformity. It is worth pointing that not all land leased out by government is for commercial purposes. Some, though held on lease is to advance the social and spiritual wellbeing of society. This includes land allocated to religious institutions and sports clubs. It is the expectation of government that institutions allocated such land will use them for the advancement of the social and spiritual needs of society and will not transfer or subdivide them for commercial or to make profit. In addition, certain categories of land are controlled (controlled Land) for security reasons as provided under Section 12A (1) of the Land Act 2012. Further 12A (2) and (2) the Land Act No 6 of 2012 provides the need for the Cabinet Secretary to give consent for any transaction in controlled land. It is also important to see the amendment in relation to issues of national security where land being transferred is in close proximity to a security installation.

It is therefore our view and proposal that:

- a) The amendment be shelved in favor of administrative action to ensure requests for consent to transfer are expeditiously handled;
- b) If the amendment is to be retained, then the following be exempted from those land transactions whose consent be dispensed with:
  - i. Land allocated for social and spiritual wellbeing of the country;
  - ii. Controlled Land as defined under section 12A of the Land Act No 6 of 2012; and
  - iii. Land near critical security installations.

## 2. Proposed insertions of section 56 (4A)

Section	Proposed insertions of a new subsection
11	Notwithstanding any contrary condition contained in the lease, the Registrar shall register a charge in respect of a lease where the government is the lessor without presentation of a consent to charge.

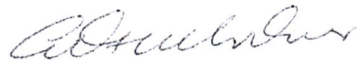


The Charge instrument confers on the Chargee sweeping powers to transact with property in the event of a default by the borrower or guarantor. These sweeping powers include the power of sale. Given these sweeping powers that Chargee acquires, the same arguments and proposals advanced and way forward arises in 1 above stand. This is a crawl back to the gains on Matrimonial property and will lead to legal challenges to chargees, the Children Act may also be affected besides that properties put out for charged may not be having clean titles a case that may be discovered at the time of seeking consent to charge.

- 3. The Commission is agreeable to amendment in section 12 as it eliminates the need for a company seal thereby enhancing faster execution of documents.**

It is clear that actions are required to improve the time it takes to complete land transactions. However, land is not homogenous and therefore require a more strategic approach. It is our view that instead of legal amendments to remove the lessors consent in land transactions a better approach would to build and strengthen the technological and administrative capacity of the public institutions to expedite issuance of consent.

Yours *Sincerely,*



**Gershom Otachi Bw'Omanwa**  
**CHAIRMAN**

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**NSSF**  
Growing You. For Good

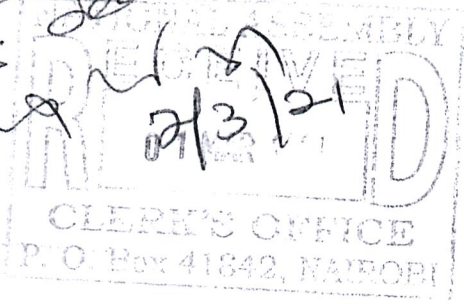
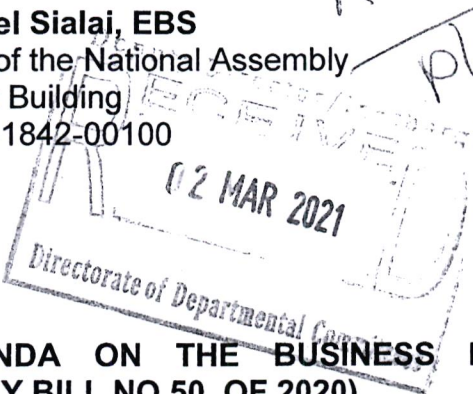
Our Ref: SF/A/15/40 VOL.IV(29)

25<sup>th</sup> February 2021

**Mr. Michael Sialai, EBS**  
The Clerk of the National Assembly  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**

*Abenayo Wasonke - lead*

*pls deal*



Dear Sir,

**MEMORANDA ON THE BUSINESS LAWS (AMENDMENT)(NO.2) (NATIONAL ASSEMBLY BILL NO 50. OF 2020)**

We make reference to the above and the invitation for public participation & submission of memoranda featured in the Daily Nation on Friday 12<sup>th</sup> February 2021.

The National Social Security Fund (NSSF) has reviewed the proposed amendment to the NSSF Act No. 45 of 2013 contained in the above bill and responds as follows.

1. The National Social Security Fund, 2013 ("the Act") is the principal Act which established the National Social Security Fund (the Fund) & the National Social Security Fund Board of Trustees under Sections 3(1) & 5(1) of the Act respectively. The purpose for which the Fund was established is provided under Section 3(2) which states as follows:

**3. Establishment of the Fund**

**Sec 3 (2) "There shall be -**

- (a) **paid into the Fund, all contributions and other payments required by this Act to be paid into the Fund;**
- (b) **prudent investments of all contributions and other payments therein; and**
- (c) **paid out of the Fund, all benefits and other payments required by the Act to be paid out of the Fund.**

2. NSSF contributions are set out in Sections 20 (mandatory) & 23 (voluntary), NSSF Investments are undertaken under Section 49(2), while NSSF benefits are paid out under Sections 36 - 40 (pension fund benefits) & Sections 41 - 46 (provident fund benefits) of the act.

3. The date for remitting contributions is provided under Section 27 (1) of the Act which states as follows:

**27. Penalty for default in payment and incorrect contributions**

**National Social Security Fund**

P.O. Box 30599 - 00100, Nairobi, Kenya T: (020) 2729911, 2710552

E: info@nssfkenya.co.ke W: www.nssf.or.ke



*(1) If any contribution for which a contributing employer is required to pay to the Fund is not paid within one month after the end of the month in which the last day of the contribution period to which it falls, a sum equal to five per cent of the amount of that contribution shall be added to the contribution for each month or part of a month that the amount due remains unpaid, and any such additional amount shall be recoverable at the same time and in the same manner as the contribution to which it is added.*

**Interpretation - Section 27(1)**

The payment (contribution) is due one month after the end of the month for which the contributions relate - ideally January 2021 contributions are due by end of February 2021.

In essence the principal act has provided for a grace period of one month within which Employers should make payment of the contribution to the Fund.

Section 27(1) of the act not only provides for the date of payment but also provides for the penalty accruing due to non-payment after the due date.

4. Clause 13 of the Business Laws (Amendment) (No.2) Bill, 2020 seeks to amend Section 20 of the NSSF Act, No. 45 of 2013 by introducing the **ninth day** as the date of payment of contributions to the Fund. Although, the Fund has no objection with revision of the date of payment, from **"within one month"** to **"by the ninth day"**, the most appropriate section for review (in our view) would be Section 27(1) of the Act. This is because Section 20 provides for the contribution rate/amount payable to the Fund.
5. We are of the opinion that Section 27(1) and not the proposed Section 20 should be reviewed for consistency in reading the Act & for the payment and penalty provision to be read hand in hand by employers.
6. For clarity purposes, we propose/recommend amendment of **Section 27(1) of the NSSF Act No 45 of 2013** by deletion of the words **"within one month"** appearing in the first sentence and replacement with the words **"by the ninth day"**.

***The new section 27(1) will read as follows: -***

**"If any contribution for which a contributing employer is required to pay to the Fund is not paid **by the ninth day** after the end of the month in which the last day of the contribution period to which it falls, a sum equal to five per cent of the amount of that contribution shall be added to the contribution for each month or part of a month that the amount due remains unpaid, and any such additional amount shall be recoverable at the same time and in the same manner as the contribution to which it is added."**

Yours faithfully,



**Dr. Anthony Omerikwa, MBS**  
**CEO/MANAGING TRUSTEE**



**ENGINEERS BOARD OF KENYA**

**MEMORANDA ON PROPOSALS FOR CONSIDERATION BY THE NATIONAL ASSEMBLY**

**IN THE MATTER OF:**

**THE BUSINESS LAWS (AMENDMENT) (NO. 2) BILL 2020**

**SUBMITTED BY:**

**ENGINEERS BOARD OF KENYA (EBK)**

**FEBRUARY 2021**

## Introduction

The Engineers Board of Kenya was established under Section 3(1) of the Engineers Act, 2011. The Board is responsible for registration of engineers and engineering consulting firms, regulation of professional engineering services, setting of standards and development of general practice of engineering.

The Board is a precursor of the Engineers Registration Board that was in existence under Cap. 530 of 1969.

## Observations and Recommendations.

Pursuant to Article 118 of the Constitution of Kenya 2010 the Board presents the following memorandum detailing its review and recommendations on the proposed BUSINESS LAWS (AMENDMENT) (NO. 2) BILL 2020.

## Provision of the Section in the Bill

Section 7: Amendment of section 22 of No 41 of 2011

*The National Construction Authority Act is amended by inserting the following new section immediately after section 22—*

*22A (1) The Board may institute an inquiry into the defects in a building to establish the cause of the defects on its own initiative or upon receipt of a complaint addressed to the Board in writing made by or on behalf of any person alleging defects in a building approved by a registered person*

*(2) The procedure for an inquiry into the conduct of a contractor shall apply, with necessary modifications, to the inquiry into the defects of a building*

*(3) Upon conclusion of an inquiry, the Board shall prepare a report which shall—*

*(a) Outline the findings on the cause of the defects in the building and the liability of the defects apportioned either on the contractor, relevant professional or the owner of the building,*

*(b) Recommend appropriate remedial action against the contractor in accordance with the Act, and*

***(c) Submit a copy of the report to the respective regulators of the relevant professionals or criminal investigation agencies for further remedial action***

*(4) The Minister shall make regulations to give effect to this section*

## Observations

It is not precisely clear as to what criteria or threshold or sufficient ground the National Construction Authority Board is going to use to determine what set of cases it would either hand over to the relevant regulatory authority or the criminal investigative agencies for further action.

The use of the word “or” in the above inserted section suggests an alternative. As a consequence, the NCA Board can as elect to submit its inquiry report to either the

- (a) Respective regulators of the relevant professionals or
- (b) Criminal Investigation Agencies

## Analysis

1) The Engineers Act 2011, Section 7(t) provides that one of the function and power of the Board is to ***hear and determine disputes relating to professional conduct or ethics of engineers.***

Further section 53 of the same Act as read together with section 14 of the Rules provide that a person being dissatisfied with any professional engineering services offered or alleging a breach of the standards of conduct, specified by the Board from time to time, by a registered or licensed person under the Act, may make a written complaint as per the Rules

2) Essentially there is in place a substantive and procedurally elaborate framework by the regulator to handle any complaints and disciplinary cases that would arise. As such the NCA Board should forward any reports involving members of the relevant professional to their respective Regulators who have the requisite knowledge to handle engineering matters. If there exist reports handed over to the Board that is outside their mandate, then the Board shall hand them over to the Criminal Investigation Agencies accordingly.

3) The Constitution of Kenya establishes in article 25 (c) as read together with Article 47 the right to fair hearing and administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

4) The Engineers Board has been mandated to oversee the general practice of the engineering profession and services. It is only right that, as the regulatory body the Board should in the first instance hear all matters either disciplinary or otherwise arising out of reports on inquiries carried out by the NCA Board.

Section 61 of the Engineers Act provides that *“This Act shall supercede any other Act on all matters relating to provision of professional engineering services”*



**The Engineers Board of Kenya therefore makes the following recommendations for consideration by the National Assembly.**

- I. That the new section being inserted under section 7, (Section 22A, (3) (c) should be amended by adding a provision to give respective regulators of the relevant professionals, in this case, Engineers Board of Kenya, the prerogative to receive reports of inquiry into defects of a building for their further remedial action.
- II. There is need to co-opt representation from the relevant regulators in the inquiries conducted by the Authority.
- III. That the criminal investigation agencies should only receive reports forwarded to them by the relevant regulatory authority and for persons that are not regulated by any professional body.
- IV. Provided that matters of relating to professional misconduct are in the first instance referred to the relevant regulatory bodies.

### **Conclusion**

We hold that the amendments as proposed do not address any lacuna in law regarding the engineering professional services as the legal framework is robust and adequate.

PROPOSED AMENDMENTS TO THE ACT UNDER BUSINESS LAW (AMENDMENT) (NO.2) BILL 2020	TECHNICAL POSITION	WAY FORWARD
<p>Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in proper alphabetical order—</p> <p><b>Insertion of the following new definition in proper alphabetical order</b></p> <p>– “building” means any construction work that has the provision of shelter for its occupants or contents as one of its main purposes and is normally designed to stand in one place. This includes both public and private buildings.</p>	<p>According to Section 2 of the Authority's Act, construction works are defined as the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of:</p> <p>a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level.</p>	<p>We propose to maintain the definition of 'building' in light of the Section 5(g)(a) of the Authority's Act which provides for the enforcement of the Building Code.</p> <p><b>We propose the introduction of a definition under this section for “Constructed Works” to mean any completed construction works.</b></p>
<p>Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in proper alphabetical order—</p> <p><b>“defect” means deficiency in the design, the workmanship, and in the materials or systems used in the construction of a building or failure in maintenance of the building that results in a failure of a component part</b></p>	<p>In line with Section 2 of the Authority's Act (as above), we propose that defects cover construction works in totality including and over and above buildings.</p>	<p>The provision to read as follows;</p> <p><b>“defect” means deficiency in the design, workmanship, and in the materials or systems used in the constructed works or failure in maintenance of the works that results in a failure of a whole or component part of a constructed works or structure resulting in partial or total collapse of the constructed works or</b></p>

<p><b>of a building or structure resulting in partial or total collapse of the building or renders the building unfit for occupation.</b></p>	<p>In accordance with Section 22 of the Authority's Act, the Board of the Authority is empowered to undertake inquiries into construction works.</p> <p>The proposed provision on inquiry into defects will enhance the Authority's quality assurance activities. Thus, it is therefore recommended that the provision is enhanced further to include "defects in construction works" to cater for water works, road works, energy and mechanical engineering services.</p> <p>Notably, the Authority will report accordingly to the respective Boards/regulators within each sector in line with their mandates in the industry.</p>	<p><b>renders the constructed works unfit for intended use or occupation.</b></p>
<p>Section 22 of the National Construction Authority Act, 2011 is amended by inserting a new Section 22A immediately before Section 22 —</p> <p><b>"22A. Inquiry into defects in a building</b></p> <p><b>The Board may institute an inquiry into defects in a building to establish the cause of the defects on its own initiative or upon receipt of a complaint addressed to the Board in writing, made by or on behalf of any person alleging defects in a building by a registered person.</b></p>	<p>The provision to read as follows;</p> <p><b>"22A. Inquiry into defects in a building</b></p> <p><b>The Board may institute an inquiry into defects in constructed works to establish the cause of the defects on its own initiative or upon receipt of a complaint addressed to the Board in writing, made by or on behalf of any person alleging defects in constructed works by a registered person.</b></p>	<p>The provision to read as follows;</p> <p><b>"22A. Inquiry into defects in a building</b></p> <p><b>The Board may institute an inquiry into defects in constructed works to establish the cause of the defects on its own initiative or upon receipt of a complaint addressed to the Board in writing, made by or on behalf of any person alleging defects in constructed works by a registered person.</b></p>
<p>Section 22 of the National Construction Authority Act, 2011 is amended by inserting a new Section 22A immediately before Section 22 —</p> <p><b>(1) Upon conclusion of an inquiry, the Board shall prepare a Report which shall —</b></p> <p><b>(a) outline the findings on the cause of the defects in the</b></p>	<p>Section 22 of the Authority's Act outlines the quasi-judicial procedure in undertaking inquiries including disciplinary actions against the registered contractor.</p> <p>The proposed provision expands Section 22 of the Authority's enabling Act to actions against the relevant professionals and reporting to relevant enforcement agencies in line with respective laws.</p>	<p>The provision is recommended as it will enhance accountability of rogue professionals and players and greater collaboration in the construction industry.</p>



building and the liability of the defects apportioned either on the Contractor, relevant professional or the owner of the building;

(b) recommend appropriate remedial action against the Contractor in accordance with the Act; and

(c) submit a copy of the report to the respective regulators of the relevant professionals or criminal investigation agencies for further remedial action.

The objective of the provisions is to support the enforcement of quality assurance throughout the lifecycle of construction works. With the unfortunate increased cases of collapsing infrastructure in the country, the enforcement against defects in construction works is essential and timely towards streamlining the construction industry. Furthermore, the proposed provisions will apportion specific obligations and liability upon relevant parties to deter negligence and cost cutting practices in the construction industry.

.....  
**Maj. Gen. (Rtd) Dr. Gordon Kihalangwa, CBS**  
**PRINCIPAL SECRETARY**

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## MINISTRY OF LANDS AND PHYSICAL PLANNING

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### SUBMISSIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS ON THE BUSINESS LAWS (AMENDMENT) (No. 2) NATIONAL ASSEMBLY BILL No. 50 OF 2020

#### Introduction

#### Honourable Chair,

Pursuant to a letter Ref. NA/DC/LANDS/2021 (28) dated March 3, 2021, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to consider the Business Laws (Amendment) (No. 2) Bill, 2020.

The Bill seeks to make amendments to various statutes to facilitate the ease of doing business in Kenya, and for connected purposes.

#### Background

The Business Laws (Amendment) Act, 2020 was assented into law and came into force on March 18, 2020. The aim of the Act was to amend various statutes to facilitate the ease of doing business in Kenya. The Act inter-alia repealed Sections 38 and 39 of the Land Registration Act, 2012.

Section 38 then compelled the registrar not to register any transaction touching on any parcel of land within a rating authority unless a certificate of payment of rates is issued by a rating authority certifying that rates and other charges have been paid. On the other hand, Section 39 equally bound the registrar not to register any transfer or create an interest in land unless a rent clearance certificate was produced certifying that no rent is owing to the National government or the County government.

Section 39 also required that necessary consents issued by the National or County government be produced before a registrar registers any transaction in respect of any parcel of land. The amendment sought to reduce the time and cost incurred in during the registration process.

The Act however did not address Sections 55 and 56 of the Land Registration Act, which still require production of rent clearance certificates in respect of leases and charges respectively. Consents required to be obtained in respect of leases and charges were also not addressed.



Through this bill, we seek to remove the requirement for production of consent in respect of leases where the government is ordinarily required to issue consent in leases where the government is the lessor.

These proposed amendments are premised on the fact that government is the custodian of all information pertaining to leases and therefore there is no need to require citizens to obtain consent based on the same information. Moreover, access to information by the registrar shall be made easier and real-time courtesy of the National Land information Management System that the Ministry is about to launch any time now.

Further, the Bill seeks to align Sections 56 and 64 of the Land Registration Act with Section 37 of the Companies Act (Cap. 480) concerning execution of documents by companies incorporated under the Companies Act as amended by the Business Laws (Amendment) Act, 2020.

A detailed matrix on the rationale for the proposed amendments is annexed herewith.

Honourable Chair, I humbly submit.

Farida Karoney, EGH  
**CABINET SECRETARY**

March 10, 2021

enhance the Authority's technical mandate in the construction industry as follows;

16. Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence –  
"building code" means the building code provided for under regulations made pursuant to section 42.

17. Section 5 of the National Construction Authority Act, 2011 is amended in subsection (2) by inserting following new paragraph immediately after paragraph (g) –  
(ga) enforce the prescribed Building Code in the construction industry.

18. Section 23 of the National Construction Authority Act, 2011, is amended by inserting the following new subsection immediately after subsection (3) –  
(3A) A person who willfully fails to comply with an order of an investigation officer under subsection (3) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both.

19. The National Construction Authority Act, 2011, is amended by inserting the following new section immediately after section 23;  
23A. The Authority shall undertake mandatory inspections at any time on sites under constructions in accordance with Section 5(2)(g).

20. Section 42 of the National Construction Authority Act, 2011 be amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (a) –  
(aa) the Building Code in the construction industry;  
(ab) the manner of conducting mandatory inspections by the Authority.

#### 4.0 Business Laws (Amendment) (No.2) Bill 2020: Proposed Amendments to the National Construction Authority Act No. 41 of 2011

In view of the meeting of the Parliamentary Departmental Committee on Transport, Public Works and Housing to review the proposed amendments to the National Construction Authority Act No. 41 of 2011 on 25<sup>th</sup> February 2021, the Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works presents the following submissions;

## 1.0 Introduction

The National Construction Authority is established by the National Construction Authority Act No. 41 of 2011 (hereinafter referred to as the 'Act') which came into effect on the 8<sup>th</sup> of June 2011. In exercise of the Cabinet Secretary's powers conferred under Section 42 of the NCA Act, the NCA Regulations were adopted by the National Assembly and took effect on the 6<sup>th</sup> June 2014 by Notice in the Kenya Gazette.

## 2.0 Mandate

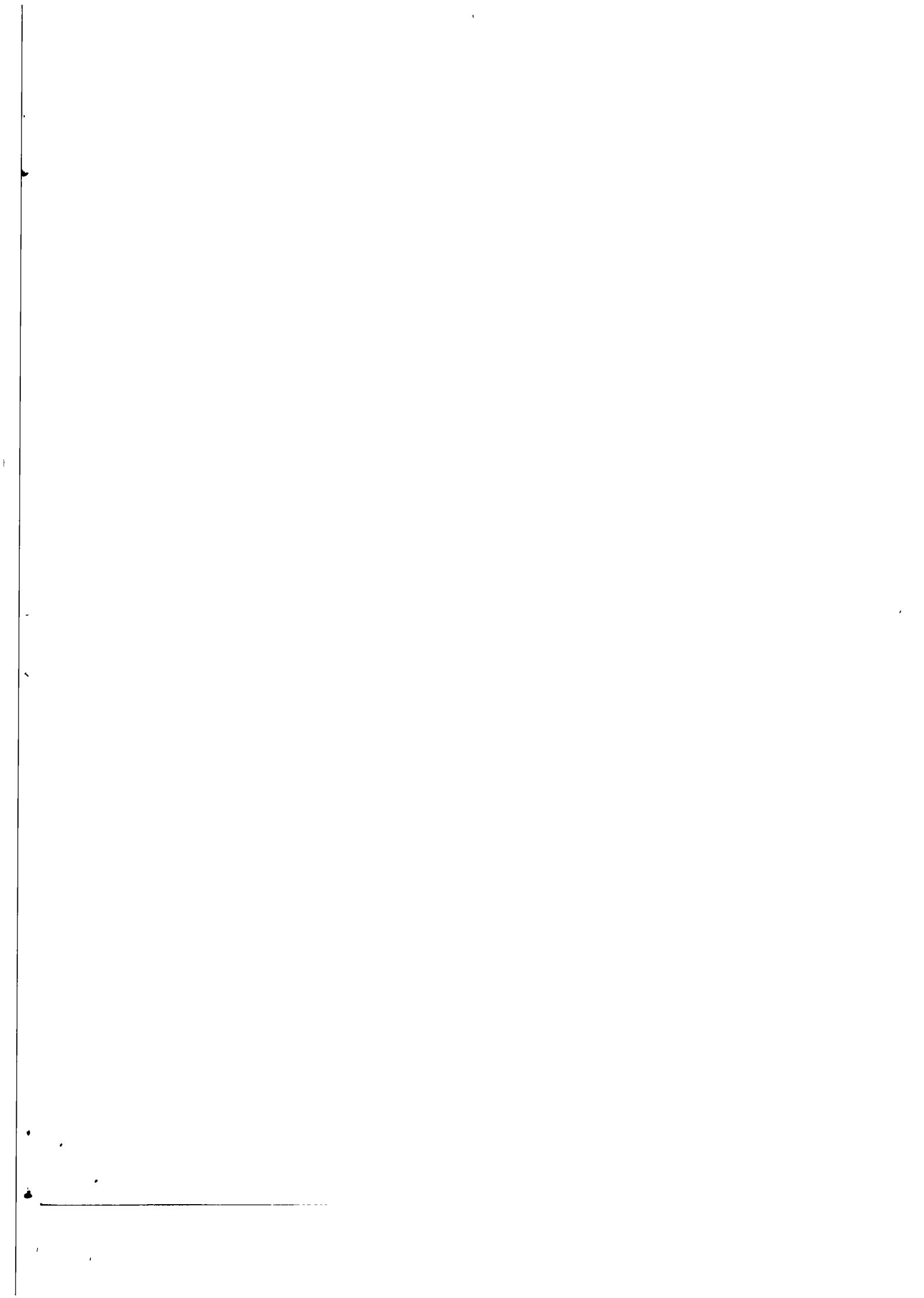
As provided under Section 5 of the Act, the object for which the Authority is established to oversee the construction industry and coordinate its development. Pursuant to Section 5(2) of the National Construction Authority's Act No. 41 of 2011 (hereinafter referred to as the Act), the Authority's functions are as follows;

- a) Promote and stimulate the development, improvement and expansion of the construction industry;
- b) Advise and make recommendations to the Minister on matters affecting or connected with the construction industry;
- c) Undertake or commission research into any matter relating to the construction industry;
- d) Prescribe the qualifications or other attributes required for registration as a contractor under the Act;
- e) Assist in the exportation of construction services connected to the construction industry;
- f) Provide consultancy and advisory services with respect to the construction industry;
- g) Promote and ensure quality assurance in the construction industry;
- h) Encourage the standardisation and improvement of construction techniques and materials;
- i) Initiate and maintain a construction industry information system;
- j) Provide, promote, review and coordinate training programmes organized by public and private accredited training centers for skilled construction workers and site supervisors;
- k) Accredit and register contractors and regulate their professional undertakings;
- l) Accredit and certify skilled construction workers and construction site supervisors;
- m) Develop and publish a code of conduct for the construction industry;
- n) Do all other things that may be necessary for the better carrying out of its functions under the Act.

## 3.0. Business Laws (Amendment) Act 2020

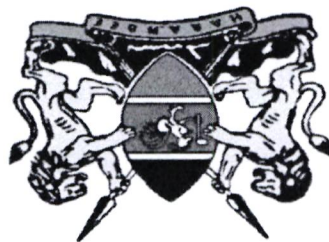
The National Construction Authority Act No. 41 of 2011 was amended vide Section 16 to 20 of the Business Laws (Amendment) Act 2020 to further

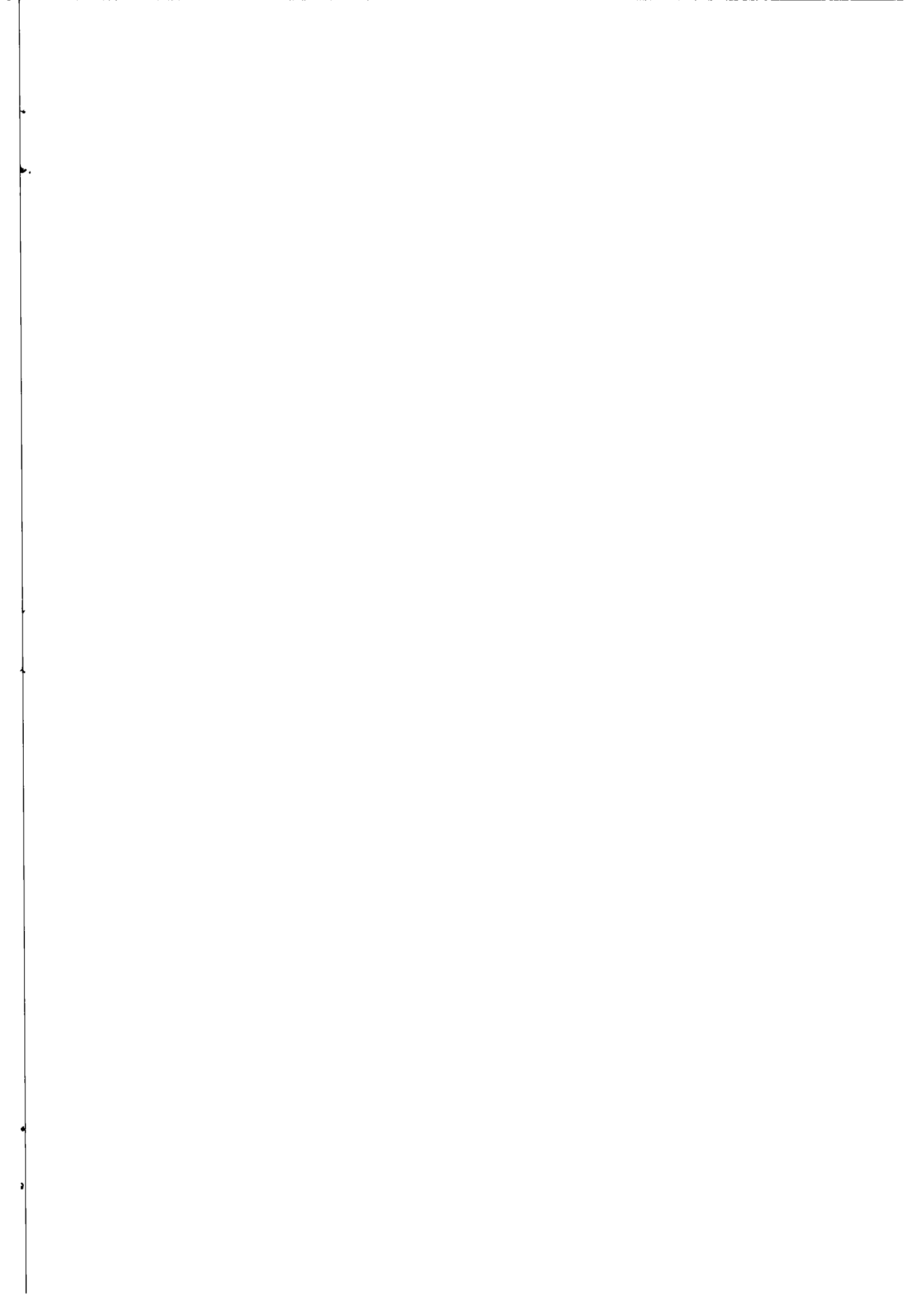




**24<sup>th</sup> FEBRUARY 2021**

**MEMORANDUM ON THE BUSINESS LAWS  
(AMENDMENT) (NO.2) BILL 2020  
STATE DEPARTMENT OF PUBLIC WORKS  
DEVELOPMENT AND PUBLIC WORKS  
INFRASTRUCTURE, HOUSING, URBAN  
MINISTRY OF TRANSPORT,**







**MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL  
DEVELOPMENT**



**Proposed amendment**

**Section 34**

Section 34 of the Small Claims Court Act is amended:

- (i) in sub-section (1) by inserting the words 'of the matter which shall be within sixty days from the date of filing the claim' immediately after the word 'determination';

Redrafted Section 34 subsection (1) will read as follows:

All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.



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## PART II: COMPARATIVE ANALYSIS OF FEES

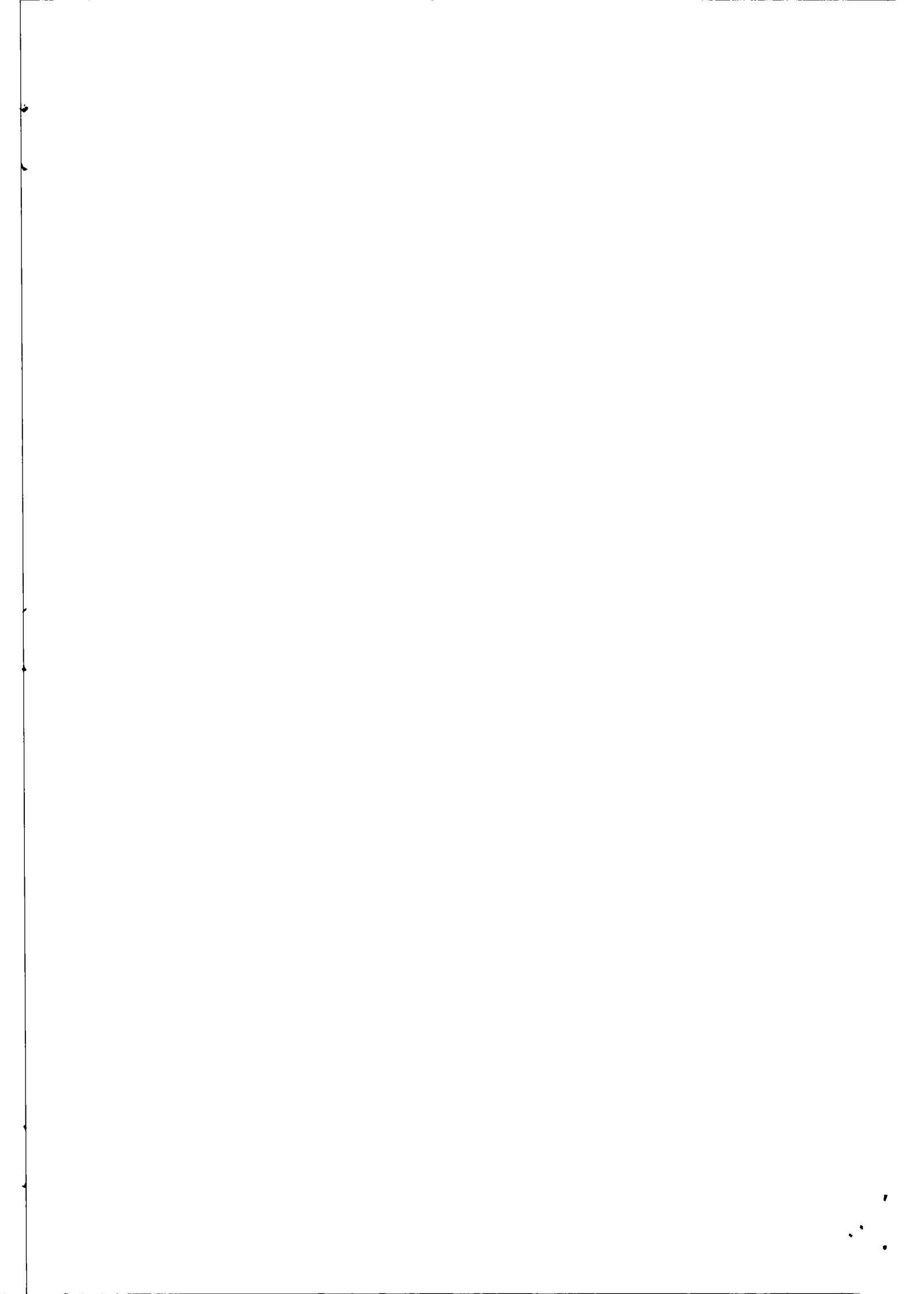
Assuming a bond trade of KES 1,000,000 (one million)

BOND TRANSACTION VALUE	BROKER COMMISSION	NSE LEVY	CDSC LEVY	CMA LEVY	INVESTOR COMPENSATION FUND	TOTAL LEVIES AND COMMISSIONS	PROPOSED STAMP DUTY
KES 1,000,000	0.024%	0.0035%	0.002%	0.0015%	0.004%	0.035%	KES 2 for every 10,000 KES (0.02%)
	KES 240 (Commissions subject to corporate tax)	KES 35 (Levy subject to corporate tax)	KES 20 (Levy subject to corporate tax)	KES 15	KES 40	KES 350	KES 200

**NSE:** Nairobi Securities Exchange  
**CDSC:** Central Depository and Settlement Corporation  
**CMA:** Capital Markets Authority

Currently, the total commissions and levies charged to trading of bonds amounts to a total of 0.035% of the value of the bond transaction. Imposing Stamp Duty of KES 2 for every KES 10,000 bond value (0.02%) would translate to an **increase of 57%** in the costs of trading bonds.





**PART I: PROPOSED AMENDMENT TO THE STAMP DUTY ACT (CAP 480)**

TITLE	SECTION	SCHEDULE	SCHEDULE																
<p><b>THE STAMP DUTY ACT (2015) Section 10.</b></p>	<p><b>STAMP DUTIES ON INSTRUMENTS ON INSTRUMENTS</b>  <b>Section 10.</b>  <i>Contract note for or relating to the sale or purchase of any stock or marketable security-</i></p> <table border="1" data-bbox="683 1397 1257 1841"> <thead> <tr> <th data-bbox="683 1514 719 1832">Instrument</th> <th data-bbox="683 1397 719 1514">Duty</th> </tr> </thead> <tbody> <tr> <td data-bbox="719 1514 874 1832"><i>Where the value of the stock or marketable security does not exceed KES 2,000</i></td> <td data-bbox="719 1397 874 1514">KES 1</td> </tr> <tr> <td data-bbox="874 1514 1066 1832"><i>Where the value of the stock or marketable security exceeds KES 2,000 but does not exceed KES 10,000</i></td> <td data-bbox="874 1397 1066 1514">KES 2</td> </tr> <tr> <td data-bbox="1066 1514 1257 1832"><i>And for every KES 10,000 and also for any fractional part of KES 10,000 in excess of KES 10,000</i></td> <td data-bbox="1066 1397 1257 1514">KES 2</td> </tr> </tbody> </table>	Instrument	Duty	<i>Where the value of the stock or marketable security does not exceed KES 2,000</i>	KES 1	<i>Where the value of the stock or marketable security exceeds KES 2,000 but does not exceed KES 10,000</i>	KES 2	<i>And for every KES 10,000 and also for any fractional part of KES 10,000 in excess of KES 10,000</i>	KES 2	<p><b>STAMP DUTIES ON INSTRUMENTS</b>  <b>Section 10.</b>  <i>Contract note for or relating to the sale or purchase of any stock <del>or marketable security-</del></i></p> <table border="1" data-bbox="608 763 1031 1397"> <thead> <tr> <th data-bbox="608 763 644 1397">Instrument</th> <th data-bbox="608 763 644 1397">Duty</th> </tr> </thead> <tbody> <tr> <td data-bbox="644 763 762 1397"><i>Where the value of the stock <del>or marketable security</del> does not exceed KES 2,000</i></td> <td data-bbox="644 763 762 1397">KES 1</td> </tr> <tr> <td data-bbox="762 763 917 1397"><i>Where the value of the stock <del>or marketable security</del> exceeds KES 2,000 but does not exceed KES 10,000</i></td> <td data-bbox="762 763 917 1397">KES 2</td> </tr> <tr> <td data-bbox="917 763 1031 1397"><i>And for every KES 10,000 and also for any fractional part of KES 10,000 in excess of KES 10,000</i></td> <td data-bbox="917 763 1031 1397">KES 2</td> </tr> </tbody> </table> <p><b>Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of collecting Stamp Duty for marketable securities for any year of income ending on or before the 31st December, 2021.</b></p>	Instrument	Duty	<i>Where the value of the stock <del>or marketable security</del> does not exceed KES 2,000</i>	KES 1	<i>Where the value of the stock <del>or marketable security</del> exceeds KES 2,000 but does not exceed KES 10,000</i>	KES 2	<i>And for every KES 10,000 and also for any fractional part of KES 10,000 in excess of KES 10,000</i>	KES 2	<p>Payment of stamp duty on contract notes relating to the sale or purchase of any stock is agreeable and acceptable, whether or not the stock is traded at an exchange or away from the exchange.</p> <p>However, payment of Stamp Duty on contract notes for other marketable securities like Government bonds would be untenable. This is because such contracts are typically very large in nature and imposing such a duty on them would make them expensive and unattractive to investors.</p> <p><b>The Government would therefore be unable to raise money through the issuance of bonds to finance its fiscal deficit which currently stands at 7.5% of GDP</b></p>
Instrument	Duty																		
<i>Where the value of the stock or marketable security does not exceed KES 2,000</i>	KES 1																		
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26 February 2021  
SUBMISSION ON THE STAMP DUTY ACT (CAP 480)

SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING OF THE NATIONAL ASSEMBLY OF KENYA

PREAMBLE

In an advertisement published by the Clerk of the National Assembly on 12<sup>th</sup> February 2021, he invited interested members of the public and organizations to submit views and make representations on The Business Laws (Amendment) (No. 2) Bill 2020 (National Assembly Bill No. 50 of 2020). This Bill had been published on 14<sup>th</sup> December 2020 and underwent the First Reading on 22<sup>nd</sup> December 2020 and is now committed to the Departmental Committee of Finance and National Planning for consideration, undertaking public participation and reporting to the House.

The Bill proposes amendments to various statutes to facilitate the ease of doing business in Kenya. Among these statutes is the Stamp Duty Act (Cap 480). This is in furtherance to Article 118 (1) (b) of the Constitution which provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees," and the National Assembly Standing Order 127(3) which requires the Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

It is on this premise, that the Kenya Association of Stockbrokers and Investment Banks (KASIB) and the Nairobi Securities Exchange (NSE) herein submit these proposals for the kind consideration of the Committee.

Signed for and on behalf of the Kenya Association of Stockbrokers and Investment Banks (KASIB) and the Nairobi Securities Exchange PLC (NSE)

*Willie Njoroge*

**WILLIE NJOROGE**  
**CHIEF EXECUTIVE**  
**KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS (KASIB)**



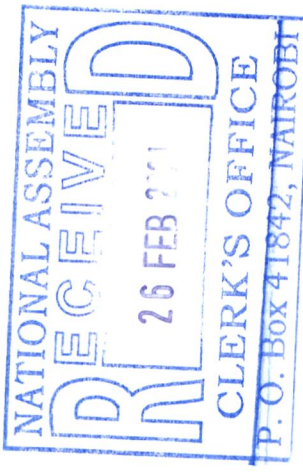
**GEOFFREY ODUNDO**  
**CHIEF EXECUTIVE**  
**NAIROBI SECURITIES EXCHANGE PLC (NSE)**



Mr. Chemweno

TO: THE CLERK OF THE NATIONAL ASSEMBLY,  
P.O. BOX 41842 – 00100,  
NAIROBI.

OFFICE OF THE CLERK,  
MAIN PARLIAMENT BUILDING



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BUSINESS LAWS (AMENDMENT) (NO. 2) BILL 2020 (NATIONAL ASSEMBLY BILL NO. 50 OF 2020)  
STAMP DUTY ACT (CAP 480)

SUBMISSIONS TO THE DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING  
OF THE NATIONAL ASSEMBLY OF KENYA

BY THE NAIROBI SECURITIES EXCHANGE (NSE) AND  
THE KENYA ASSOCIATION OF STOCKBROKERS AND INVESTMENT BANKS (KASIB)

