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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2021**

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**THE FINANCE ACT, 2021****No. 8 of 2021***Date of Assent: 29th June, 2021**Date of Commencement: See Section 1***AN ACT of Parliament to amend the law relating to various taxes and duties; and for matters incidental thereto****ENACTED** by the Parliament of Kenya, as follows—**PART I—PRELIMINARY**

**1.** This Act may be cited as the Finance Act, 2021, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

- (a) sections 9, 10, 13, 14, 19, 21(a), 21(b), 21(e), 40, 50, 58, 60, 73, 75, and 76, on the 1st January, 2022; and
- (b) all other sections, on the 1st July, 2021.

**PART II—INCOME TAX**

**2.** Section 2 of the Income Tax Act is amended—

Amendment of section 2 of Cap. 470.

- (a) by inserting the following new definitions in proper alphabetical sequence—
  - “control”, in relation to a person, means—
    - (a) that the person, directly or indirectly, holds at least twenty per cent of the voting rights in a company;
    - (b) a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the other person excluding a loan from a financial institution that is not associated with the person advancing the loan;
    - (c) a guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor;

- (d) the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- (e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;
- (f) the person or a person designated by that person—
  - (i) supplies at least ninety per cent of the supply of the purchases of another person; and
  - (ii) upon assessment, the Commissioner deems influence in the price or other conditions relating to the supply of the purchases of another person;
- (g) the person purchases or designates a person—
  - (i) to purchase at least ninety per cent of the sales of another person; and
  - (ii) upon assessment, the Commissioner deems influences in the price or any other conditions of the sales of another person;
- (h) the person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

“infrastructure bond” means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, a communication network or energy project;

- (b) by deleting the definition of “permanent establishment” and substituting therefor the following new definition—

“permanent establishment” includes—

- (a) a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet;
- (b) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days:

Provided that for the purpose of determining whether the period specified in this paragraph has been exceeded—

- (i) where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days, and
- (ii) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise,

the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project;

- (c) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned;
- (d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days;

- (e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person,

but excludes the following activities where the activities are of a preparatory or auxiliary character—

- (i) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
- (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; and
- (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

**3.** Section 3 of the Income Tax Act is amended—

Amendment of section 3 of Cap. 470.

- (a) in subsection (2), by deleting paragraph (ca) and substituting therefor the following new paragraph—
  - (ca) income accruing from a business carried out over the internet or an electronic network including through a digital marketplace;
- (b) in subsection (3), by deleting paragraph (ba) and substituting therefor the following new paragraph—
  - (ba) “digital marketplace” means an online or electronic platform which enables users to sell or provide services, goods or other property to other users.

**4.** Section 4A of the Income Tax Act is amended in subsection (4) by deleting the definition of the word “control”.

Amendment of section 4A of Cap. 470.

**5.** The Income Tax Act is amended in section 11 by inserting the following new subsection immediately after subsection (3)—

Amendment of section 11 of Cap. 470.

- (3A) In the case of a registered trust, sub-section (3) shall only apply to—
  - (a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;

- (b) income paid to any beneficiary which is collectively below ten million shillings in the year of income;
- (c) such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

**6. Section 12D of the Income Tax Act is amended—**

- (a) in subsection (1) by deleting paragraphs (d) and (e);
- (b) by inserting the following new subsection immediately after subsection (1)—
  - (1A) Notwithstanding the provisions of subsection (1), a person shall not pay minimum tax if that person—
    - (a) is engaged in business whose retail price is controlled by the Government;
    - (b) is engaged in insurance business;
    - (c) is engaged in manufacturing and that person's cumulative investment in the preceding four years from assent is at least ten billion shillings;
    - (d) is licensed under the Special Economic Zones Act, 2015; and
    - (e) is engaged in distribution business whose income is wholly based on a commission.

Amendment of section 12D of Cap. 470.

**7. Section 12E of the Income Tax Act is amended—**

- (a) by deleting subsection (1) and substituting therefor the following new subsection—
  - (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace.
- (b) by deleting subsection (2) and substituting therefor the following new subsection—
  - (2) A person subject to digital service tax shall submit a return and pay the tax due to the

Amendment of section 12E of Cap. 470.



Commissioner on or before the twentieth day of the month following the end of the month in which the digital service was offered.

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

(3) Despite subsection (1), digital service tax shall not apply to income chargeable under section 9(2) or section 35.

**8.** Section 15 of the Income Tax Act is amended —

Amendment of section 15 of Cap. 470.

(a) in subsection (2), by deleting the words “and in this subparagraph “control” has the meaning assigned to it in paragraph 32 of the Second Schedule” appearing in subparagraph (r)(iv);

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

(4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the succeeding years of income.

**9.** Section 16 of the Income Tax Act is amended in subsection (2) by—

Amendment of section 16 of Cap. 470.

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

(j) gross interest paid or payable to related persons and third parties in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that—

(i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and

(ii) this paragraph shall apply to—

(A) interest on all loans;

(B) payments that are economically equivalent to interest; and

- (C) expenses incurred in connection with raising the finance.
- (iii) this paragraph shall not apply to —
  - (A) banks or financial institutions licensed under the Banking Act; and
  - (B) micro and small enterprises registered under the Micro and Small Enterprises Act, 2012;
- (b) inserting the following new paragraph immediately after paragraph (j)—
  - Cap.488. (ja) an amount of deemed interest where the person is controlled by a non-resident person alone or together with not more than four other persons and where the company is not a bank or a financial institution licensed under the Banking Act.

**10.** The Income Tax Act is amended by inserting the following new section immediately after section 18A—

Insertion of new section in Cap. 470.

Returns on activities in other jurisdictions.

**18B.** (1) In this section—

“multinational enterprise group” means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction; and

“ultimate parent entity” means an entity that—

- (a) is resident in Kenya for tax purposes;
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

(2) An ultimate parent entity of a multinational enterprise group shall submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence, not later than twelve months after the last day of the reporting financial year of the group.

(3) The return submitted under subsection (2) shall contain the prescribed information on the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the group operates.

**11.** Section 25 of the Income Tax Act is amended in subsection (7) in the definition of the term "settlement" by inserting the words "through a registered family trust or" immediately after the words "transfer of assets".

Amendment of section 25 of Cap. 470.

**12.** Section 26 of the Income Tax Act is amended in sub section (5) in the definition of the word "settlement" by inserting the words "other than a registered family trust" immediately after the word "covenant".

Amendment of section 26 of Cap. 470

**13.** Section 31 of the Income Tax Act is amended in subsection (1) by inserting the words "or a contribution made to the National Hospital Insurance Fund" immediately after the expression "2007" appearing in paragraph (v) of the proviso to the subsection.

Amendment of section 31 of Cap. 470.

**14.** Section 39B of the Income Tax Act is amended in subsection (1) by inserting the words "or technical and vocational education and training" immediately after the word "university".

Amendment of section 39B of Cap. 470.

**15.** The Income Tax Act is amended by deleting section 41 and substituting therefor the following new section—

Amendment of section 41 of Cap. 470.

Special arrangement for relief from double taxation.

41. (1) Every special arrangement for relief from double taxation made with the Government of any country outside of the Republic of Kenya with a view of affording relief from double taxation in relation to income tax and any taxes of similar character imposed by the laws of that country shall, subject to subsection (2) but notwithstanding any other provision to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such agreement shall be subject to the provisions of the Treaty Making and Ratification Act, 2012.

(2) Subject to subsection (3), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by a person or persons who are not residents of that other contracting state for the purposes of the agreement.

(3) Subsection (2) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

(4) In this section, the terms "person" and "underlying ownership" have the respective meanings assigned to them in the Ninth Schedule.

**16.** The Income Tax Act is amended in section 41A by deleting the words "specified in the notice being arrangements". Amendment of section 41A of Cap. 470

**17.** Section 133 of the Income Tax Act is amended – Amendment of section 133 of Cap. 470

(a) in subsection (6) by deleting the expression "31st December, 2021" and substituting therefor the expression "31st December, 2022";

(b) by inserting the following new subsection immediately after subsection (6) –

(7) Subject to the provisions of section 12 of this Act, any investment allowance on any written down values as at the date of commencement of this Act, shall be claimed on a straight-line basis.

**18.** The First Schedule to the Income Tax Act is amended— Amendment of the First Schedule to Cap.470.

(a) in paragraph 36 by inserting the following new paragraph immediately after paragraph (h)—

(g) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.

(b) by inserting the following new paragraphs immediately after paragraph 56—

57. The income or principal sum of a registered family trust.

58. Any capital gains relating to the transfer of title of immovable property to a family trust.

**19.** The Second Schedule to the Income Tax Act is amended—

Amendment of the  
Second Schedule to  
Cap. 470.

- (a) in paragraph 1—
  - (i) in subparagraph (a), by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;
  - (ii) in subparagraph (b)—
    - (A) by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;
    - (B) by deleting the words “under a mining right” appearing in subparagraph (xi);
  - (iii) in subparagraph (c), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;
  - (iv) in subparagraph (d), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;
  - (v) in the proviso—
    - (A) by deleting the words “through the national grid” appearing immediately after the word “electricity” appearing in subparagraph (f) thereof;
    - (B) by adding the following new subparagraph immediately after subparagraph (f)—
      - (g) civil works include –
        - (i) roads and parking areas;
        - (ii) railway lines and related structures;

- (iii) water, industrial effluent and sewerage works;
  - (iv) communications and electrical posts and pylons and other electrical supply works; and
  - (v) security walls and fencing.
- (h) “Farm works” means farmhouses, labour quarter, any other immovable building necessary for the proper operation of the farm, fences, daps, drains, water and electricity supply works and other works necessary for the proper operation of the farm;
- (b) by inserting the following new subsection immediately after subsection (1)—
- (1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where—
- (a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings:
 

Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020;
  - (b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or

- (c) the person has incurred investment in a special economic zone.

**20.** The Third Schedule to the Income Tax Act is amended in paragraph 5 by inserting the following new sub-paragraph immediately after sub-paragraph (ja)-

Amendment of the Third Schedule to Cap.470.

- (jb) in respect to the disbursement of deemed income to beneficiaries under section 11 (3) (c) the rate of twenty five percent.

**21.** The Ninth Schedule to the Income Tax Act is amended—

Amendment of the Ninth Schedule to Cap. 470.

- (a) in paragraph 4, by deleting subparagraph (3) and substituting therefor the following new subparagraph—

(3) The rate of depreciation for machinery first used to undertake operations under a prospecting right shall be the rate specified in paragraph 1(b)(x) of the Second Schedule.

- (b) in paragraph 9, by deleting subparagraph (3) and substituting therefor the following new subparagraph—

(3) The rate of depreciation for machinery first used to undertake exploration operations shall be the rate specified in paragraph 1(b)(xi) of the Second Schedule.

- (c) in paragraph 15—

(i) by deleting the expression “5.625%” appearing in item (a) of subparagraph (2) and substituting therefor the expression “ten per cent”.

(ii) by deleting the expression “5.625%” appearing in item (b) of subparagraph (2) and substituting therefor the expression “ten per cent”.

- (d) in paragraph 16, by deleting the words “twelve and a half per cent” appearing in subparagraph (d) and substituting therefor the expression “ten per cent”.

- (e) by deleting paragraph 18 and substituting therefor the following new paragraph—



Deductibility of  
interest.

The provisions of section  
16(2)(j) shall apply to a  
contractor or a licensee.

### PART III—VALUE ADDED TAX

**22.** Section 2 of the Value Added Tax Act, 2013 is amended in subsection (1) by deleting paragraph (c) of the definition of the term “supply of imported services” and substituting therefor the following new paragraph—

Amendment of  
section 2 of No. 35  
of 2013.

- (c) in the case of a registered person, the person would not have been entitled to a full amount of input tax payable if the services had been acquired by that person in a taxable supply.

**23.** Section 5 of the Value Added Tax Act, 2013 is amended—

Amendment of  
section 5 of No. 35  
of 2013.

- (a) in subsection (7), by inserting the words “over the internet or an electronic network or” immediately after the word “made”;
- (b) by deleting subsection (9) and substituting therefor the following new subsection—

(9) For the purposes of this section, “digital marketplace” means an online platform which enables users to sell or provide services, goods or other property to other users.

**24.** Section 10 of the Value Added Tax Act, 2013 is amended—

Amendment of  
section 10 of No. 35  
of 2013.

- (a) in subsection (1), by deleting the word “registered”;
- (b) in subsection (2), by deleting the expression “a registered person referred to in subsection (1)” and substituting therefor the expression “the person referred to in subsection (1) is a registered person and”;
- (c) in subsection (3), by deleting the words “by any person”.

**25.** Section 17 of the Value Added Tax Act, 2013 is amended—

Amendment of  
section 17 of No. 35  
of 2013.

- (a) in subsection (1), by deleting the word “section” appearing immediately after the words “provisions of this” and substituting therefor the word “Act”;

- (b) in subsection (4), by inserting the words “leasing or hiring” immediately after the word “acquisition”.

**26.** Section 19 of the Value Added Tax Act, 2013 is amended in subsection (2) by deleting the word “registered”. Amendment of section 19 of No. 35 of 2013.

**27.** The First Schedule to the Value Added Tax Act, 2013 is amended— Amendment of First Schedule to No. 35 of 2013.

- (a) in Part I—

- (i) by deleting paragraph 33;
- (ii) by deleting paragraph 34;
- (iii) by deleting the following tariff numbers and corresponding descriptions in the table appearing after paragraph 39—

Tariff Number	Description
3001.90.10	Heparin and its salts
3001.90.90	Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3002.10.00	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes
0402.99.10	Milk, specially prepared for infants
0402.91.10	Other not containing added sugar or other sweetening matters specially prepared for infants
0402.21.10	Other milk in powder, granules, or other solid forms, of a fat content, by weight, exceeding 1.5%

(iv) by deleting the item “ordinary bread” appearing in paragraph 39;

(v) by adding the following new tariff numbers and corresponding descriptions to the table appearing immediately after paragraph 39 in their proper numerical sequence—

Tariff Number	Description
2106.10.00	Protein concentrates and textured protein substances
2106.90.10	Food preparations specially prepared for infants
2106.90.99	Other - Food preparations not elsewhere specified or included
2936.27.00	Vitamin C and its derivatives
3001.90.00	Other - Heparin and its salts
3001.90.00	Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3002.11.00	Malaria diagnostic test kits
3002.12.00	Antisera and other blood fractions
3002.13.00	Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale
3002.14.00	Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale
3002.15.00	Immunological products put up in measured doses or in forms or packings for retail sale
3002.19.00	Other - Antisera, other blood fractions and immunological products, whether or not

	modified or obtained by means of biotechnological processes
3003.31.00	Insulin
3004.43.00	Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts
3004.60.00	Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter
2106.90.91	Food supplements
0402.21.00	Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter
0402.29.00	Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%
0402.91.00	Other not containing added sugar or other sweetening matter.
0402.99.00	Other milk
9021.10.00	Orthopaedic or fracture appliances
9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories
9025.19.00	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of

these instruments,  
thermometers and pyrometers,  
not combined with other  
instruments: Other

9019.20.00 Airway Guedel and Ambu  
bags

9018.90.00 Blood giving set and infusion  
sets

(vi) by deleting paragraph 68 and  
substituting therefor the following new  
paragraph—

68. Super absorbent polymer (SAP) of tariff  
number 3906.90.00

(vii) by deleting paragraph 70 and  
substituting therefor the following  
new paragraph—

70. IP super soft fluff pulp - for-fluff 310  
treated pulp 488\*125mm (cellulose) of tariff  
number 4703.21.00

(viii) by deleting paragraph 71 and  
substituting therefor the following  
new paragraph—

71. Perforated PE film 15-22 gsm of tariff  
number 3921.90.00

(ix) by deleting paragraph 72 and  
substituting therefor the following new  
paragraph—

72. Spun bound non-woven 15-25gsm of tariff  
number 5603.11.00

(x) by deleting paragraph 73 and  
substituting therefor the following new  
paragraph—

73. Airlid paper with super absorbent polymer  
180gsm/67 of tariff number 4803.00.00

(xi) by deleting paragraph 74 and  
substituting therefor the following new  
paragraph—

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 4803.00.00

(xii) by deleting paragraph 75;

(xiii) by deleting paragraph 76;

(xiv) by deleting paragraph 77 and substituting therefor the following new paragraph—

77. Pressure sensitive adhesive of tariff number 3506.91.00

(xv) by deleting paragraph 78 and substituting therefor the following new paragraph—

78. Plain polythene film/LPDE of tariff number 3921.19.10

(xvi) by deleting paragraph 79 and substituting therefor the following new paragraph—

79. Plain polythene film/PE of tariff number 3921.19.10

(xvii) by deleting paragraph 80 and substituting therefor the following new paragraph—

80. PE white 25-40gsm/release paper of tariff number 4811.49.00

(xviii) by deleting paragraph 81 and substituting therefor the following new paragraph—

81. ADL 25-40gsm of tariff number 5603.11.00

(xix) by deleting paragraph 82 and substituting therefor the following new paragraph—

82. Elasticized side tape of tariff number 5402.44.00

(xx) by deleting paragraph 83 and substituting therefor the following new paragraph—

83. 12-16 gsm spun bound piyropo nonwoven cover stock/12 gsm spun bound pp non-woven SMS hydrophobic leg cuffs of tariff number 5603.11.00

(xxi) by deleting paragraph 84 and substituting therefor the following new paragraph—

84. Polymetric elastic 2/3 strands of tariff number 3919.90.10

(xxii) by deleting paragraph 85;

(xxiii) by deleting paragraph 86;

(xxiv) by deleting paragraph 87;

(xxv) inserting the following new paragraphs immediately after paragraph 111—

112. Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Petroleum Act, 2019, or a mining license in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be.

113. Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.

114. Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the

agreement or contract provided for exemption from value added tax:

Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy.

115. Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health.

116. Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

117. Dexpanthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

118. Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3003.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses

119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health.

120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.



121. Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether or not combined on a single base with other dental equipment, upon approval by the Cabinet Secretary responsible for matters relating to health.

122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.

123. Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus upon approval by the Cabinet Secretary responsible for matters relating to health.

124. Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters upon approval by the Cabinet Secretary responsible for matters relating to health.

125. Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

126. Apparatus based on the use of x-rays, whether or not for medical, surgical or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and 9022.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

127. Apparatus based on the use of alpha, beta or gamma radiations, whether or not for medical, surgical or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00, upon approval by the Cabinet Secretary responsible for matters relating to health.

128. Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health.

129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health.

130. Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

131. Sterilizer Dry Heat (Wgd-001-Grx-05A) Pc, autoclave steam table tops of tariff number 8419.20.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

132. Needle holders and urine bags, of tariff heading 3926

133. Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

134. Taxable supplies including fish feeding and handling, water operations, cold storage, fish cages, pond construction and maintenance, and fish processing and handling, imported or purchased for direct and exclusive use on the recommendation of the relevant state department;

135. Pre-fabricated biogas digesters.

136. Biogas.

137. Sustainable fuel briquettes for household and commercial use.

138. The supply of denatured ethanol of tariff number 2207.20.00.

139. Tractors other than road tractors for semitrailers.

(b) in Part II, by adding the following new paragraphs immediately after paragraph 31—

32. The exportation of taxable services.

33. The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.

(c) in Part II, by deleting paragraph 18A.

**28.** The Second Schedule to the Value Added Tax Act, 2013 is amended—

Amendment of the Second Schedule to No. 35 of 2013.

(a) in paragraph 1 of Part A, by deleting the words “or taxable services”;

(b) in paragraph 1 of Part A by inserting the following items immediately after item 19—

20. The transportation of goods originating from Kenya to a place outside Kenya.

21. Transportation of sugarcane from farms to milling factories.

22. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per cent in weight.

#### PART IV—EXCISE DUTY

**29.** Section 2 of the Excise Duty Act, 2015 is amended by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 23 of 2015.

Cap. 123. “compound” has the meaning assigned to it in section 2 of the Compounding of Potable Spirits Act.

“possession” means having, owning or controlling any excisable goods including—

- (a) having in one’s possession any excisable goods;
- (b) knowingly having any excisable goods in the actual possession or custody of any other person;
- (c) having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself; or
- (d) having any excisable goods for the use or benefit of another person:

Provided that if there are two or more persons and any of them with the knowledge or consent of the others has any excisable goods in his custody or possession, such goods shall be deemed to be in the custody and possession of all of them.

**30.** Section 7 of the Excise Duty Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 7 of No.2 of 2015

(3A). A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within twenty-one days on which it next sits after the notice is so laid, that the notice—

- (a) be approved; or
- (b) be annulled and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.

**31.** Section 14 of the Excise Duty Act, 2015 is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection—

Amendment of section 14 of No. 23 of 2015.

(2) Where excise duty has been paid in respect of internet data services by a licensed person who purchases the data in bulk for resale, the excise duty paid shall be offset against the excise duty payable by that person on internet data services supplied to the final consumer.

32. The First Schedule to the Excise Duty Act, 2015 is amended—

Amendment of the  
First Schedule to  
No. 23 of 2015.

- (a) in paragraph 1 of Part I—
- (i) by deleting the rate of excise duty appearing in the description “Imported sugar confectionary of tariff heading 17.04” and substituting therefor the following rate “Shs.35 per kg”;
- (ii) by deleting the word “imported” appearing in the description “Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00”;
- (iii) by inserting the following proviso “provided that it shall not apply to glass bottles imported from any of the countries within the East African Community” at the end of the description “imported glass bottles (excluding glass bottles for packaging of pharmaceutical products)”;
- (iv) by inserting the following item at the end of the second table—

Description	Rate of Excise Duty
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Shs. 1,200 per kg
Articles of plastic of tariff heading 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or	20%

stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number 9403	25%
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
3907.91.00 unsaturated polyester	10%
3907.50.00 Alkyd	10%
3905.91.00 Emulsion VAM	10%
3903.20.00 Emulsion-styrene Acrylic	10%
3905.19.00 Homopolymers	10%
3906.90.00 Emulsion B.A.M	10%

(b) in part II by deleting the expression “the rate of fifteen percent” appearing in paragraph 1 and substituting therefor the expression “the rate of twenty percent”;

(c) in Part II by inserting the following new paragraph immediately after paragraph 4—

4A. Excise duty on betting shall be seven-point five per cent of the amount wagered or staked.

4B. Excise duty on gaming shall be seven-point five per cent of the amount wagered or staked.

4C. Excise duty on price competition shall be seven-point five percent of the amount paid or charged to participate in a prize competition.

4D. Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.

(d) in Part III, in the definition of “other fees”, by deleting the words “fees or commissions earned in respect of a loan”.

**33.** The Second Schedule to the Excise Duty Act is amended—

Amendment of the Second Schedule to No. 23 of 2015.

(a) in Part I by inserting the following new paragraph immediately after paragraph 12—

13. Illuminating kerosene supplies to licenced or registered manufacturers of paint, resin or shoe polish in such quantities as the Commissioner may approve.

(b) in Part II in Item 1 by inserting the following new paragraph immediately after paragraph 2—

3. Excisable services supplied in Kenya by a mobile telecommunication service provider on the sale of a ring back tune to a subscriber.

#### PART V—TAX PROCEDURES

**34.** Section 3 of the Tax Procedures Act, 2015 is amended in the definition of “tax law” by—

Amendment of section 3 of No. 29 of 2015

No. 29 of 2016.

(a) inserting the expression “the Miscellaneous Fees and Levies Act, 2016” immediately after the words “Excise Duty Tax Act, 2015” appearing in paragraph (b);

No. 29 of 2016.

(b) inserting the words “the Miscellaneous Fees and Levies Act, 2016” after the words “Excise Duty Act, 2015” appearing in paragraph (c).

**35.** The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 6—

Insertion of new sections in No. 29 of 2015

International tax agreements.

6A. (1) Any multilateral agreements and treaties that have been entered into by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters shall have effect in the manner stipulated in such agreements or treaties.

(2) Notwithstanding any other provision of this Act or any other written law, the information obtained pursuant to agreements specified under subsection (1) shall not be disclosed except in accordance with the conditions specified in the agreements.

Common reporting standard obligations.

6B. (1) In this section—

“common reporting standard” means the reporting and due diligence standard for the automatic exchange of financial account information;

“financial institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company; and

“Kenyan financial institution” means—

- (a) any financial institution that is resident in Kenya but does not mean any branch of that financial institution that is located outside Kenya; or
- (b) any branch of a financial institution that is not



resident in Kenya, if that branch is located in Kenya.

(2) A reporting financial institution shall comply with the due diligence procedures and record keeping requirements as set out in the common reporting standard Regulations prescribed under subsection (6).

(3) A reporting financial institution shall identify reportable accounts as specified by the common reporting standard Regulations prescribed under subsection (6) and file with the Commissioner—

(a) an information return on reportable accounts held, managed or administered by that reporting financial institution; or

(b) a return marked “nil” if no account held, managed or administered by that reporting financial institution is identified as a reportable account.

(4) The date by which and the manner in which an information return or a ‘nil’ return shall be filed with the Commissioner shall be as set out in the common reporting standard Regulations prescribed under subsection (6).

(5) Where a financial institution, intermediary, service provider, or any other person enters into any arrangements or engages in a

practice the main purpose or one of the main purposes of which can reasonably be considered to be to avoid an obligation imposed under this section or under Regulations made under this Act, the arrangement or practice shall be deemed not have been entered into or engaged in and this section shall apply as if the arrangement or practice had not been entered into or engaged in.

(6) The Cabinet Secretary may, by Regulations, prescribe common reporting standards for the purposes of this Act.

**36.** Section 23 of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (2)—

Amendment of section 23 of No. 29 of 2015

(2A) Despite subsection (2), the unit of currency in books of account, records, paper registers, tax returns or tax invoices in respect of a non-resident person carrying on business through a digital marketplace shall be in convertible foreign currency as may be approved by the Commissioner.

(2B) The provisions of subsection (2) shall not apply to a non-resident person who files returns and makes payments through a resident tax representative or non-resident person with a permanent establishment.

**37.** Section 37 of the Tax Procedures Act, 2015 is amended—

Amendment of section 37 of No. 29 of 2015.

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

(d) there is any other reason occasioning inability to recover the unpaid tax.

(b) by inserting the following new subsection immediately after subsection (3)—

(4) The Commissioner shall submit a report to the Cabinet Secretary on or before the 30th June and on or

before the 31st December of each year containing the details and amounts of taxes abandoned under this section.

**38.** The Tax Procedures Act, 2015 is amended by repealing section 37A.

Repeal of section 37A of No. 29 of 2015

**39.** Section 42A of the Tax Procedures Act, 2015 is amended by deleting subsection (4A).

Amendment of section 42A of No. 29 of 2015.

**40.** Section 47 of the Tax Procedures Act, 2015 is amended by inserting the following new subsections immediately after subsection (4)—

Amendment of section 47 of No. 29 of 2015

(4A) Where the Commissioner notifies a taxpayer that an application for a refund has been ascertained in accordance with subsection (3), and applies the refund to the payment of an outstanding tax in accordance with subsection (4)(a) or (b), interest or penalties shall not accrue on the amount applied to the payment of the outstanding tax from the date of the notification.

(4B) For the avoidance of doubt, where the Commissioner has applied a refund to the payment of an outstanding tax under subsection (4A), if there is any outstanding tax after such application, the outstanding tax shall accrue interest and penalties in accordance with this Act.

(4C.) Without prejudice to the provisions of this section, once the Commissioner notifies of a decision under subsection (3) and the Commissioner is satisfied that there is an overpayment of tax, the overpaid tax shall be deemed to have been offset against the taxpayer's future tax liabilities.

**41.** Section 57 of the Tax Procedures Act, 2015 is amended in paragraph (a) by inserting the expression "section 58" immediately after the words "authorized office under".

Amendment of section 57 of No. 29 of 2015.

**42.** Section 77 of the Tax Procedures Act, 2015 is amended by deleting the proviso and substituting therefor the following new proviso—

Amendment of section 77 of No. 29 of 2015

Provided that where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

**43.** The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 88—

Insertion of new sections 88A to No. 29 of 2015.

Penalties for non-compliance with common reporting standard obligations.

88A. (1) A person who makes a false statement or omits any information required to be included in an information return under section 6B, shall be liable to a penalty of one hundred thousand shillings for each such false statement or omission to imprisonment for a term not exceeding three years or to both unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from that other person.

(2) A reporting financial institution that fails to file an information return or a “nil” return when required under section 6B shall be liable to pay a penalty of one million shillings for each such failure.

(3) A person who fails to comply with a duty or obligation under section 6B shall be liable, where no other penalty is prescribed, to a penalty of twenty thousand shillings, and twenty thousand shillings for each day during which non-compliance continues for a period not exceeding sixty days.

**44.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 96—

Insertion of new section in No. 29 of 2015.

Commissioner may seek intervention from relevant authorities.

96A. The Commissioner may seek the intervention of a relevant authority in the collection of tax where a person who provides

services over the internet or an electronic network including through a digital marketplace has not fulfilled the person's tax obligations.

**45.** Section 98 of the Tax Procedures Act, 2015 is amended in subsection (1)— Amendment to section 98 of No. 29 of 2015.

(a) by inserting the following new subparagraphs in paragraph (d)—

- (i) the securing of the property or goods; and
- (ii) the discovery of proof of the commission of an offence;

(b) by deleting paragraph (e);

(c) by deleting paragraph (f).

**46.** Section 99 of the Tax Procedures Act, 2015 is amended in subsection (1)(b) by deleting the expression “as required under section 59(1)(c)”. Amendment to section 99 of No. 29 of 2015.

**47.** Section 111 of the Tax Procedures Act, 2015 is amended by inserting the words “in good faith” immediately after the word “committed” appearing in the opening paragraph. Amendment to section 111 of No. 29 of 2015.

**48.** The First Schedule to the Tax Procedures Act, 2015 is amended by adding the following new item immediately after item 13— Amendment of the First Schedule to No. 29 of 2015

- 14. Carrying out business over the internet or an electronic network including through a digital marketplace.

#### PART VI—MISCELLANEOUS FEES AND LEVIES

**49.** The Miscellaneous Fees and Levies Act, 2016 is amended in section 8A by deleting subsection (4) and substituting therefor the following new subsection— Amendment of section 8A of No. 29 of 2016

(4) The levy shall not apply to a licenced or registered manufacturer of paint, resin or shoe polish.

**50.** The Miscellaneous Fees and Levies Act, 2016 is amended by inserting a new section immediately after section 9A— Insertion of new section to No. 29 of 2016.

Application of Tax Procedures Act, 2015 to excess tax refunds. **9B.** The provisions of section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of—

- (a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or
- (b) the determination by the Commissioner of penalties and interests on fees that remain unpaid.

**51.** The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended—

Amendment of the Second Schedule to No. 29 of 2016

- (a) in Part A, by inserting the following new item immediately after item (xxv)—

(xxvi) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings.

- (b) in Part B, by inserting the following new item immediately after item (ix)—

(x) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings.

#### PART VII—MISCELLANEOUS

**52.** Section 52 of the Stamp Duty Act is amended in sub-section 2 by inserting the words “or a registered family trust” in paragraph (b) after the word “established”.

Amendment of section 52 of Cap. 480

**53.** Section 117 of the Stamp Duty Act is amended in sub-section (1) by inserting the words “registered family trust” in paragraph (h) immediately after the word “codicil

Amendment of section 117 of Cap. 480

**54.** Section 35A of the Capital Markets Act is amended by deleting subsection (17) and substituting therefor the following new subsection—

Amendment of section 35A of Cap. 485A.

(17) The Tribunal shall hear and determine an appeal within ninety days from the date of filing of the appeal.

**55.** Section 2 of Insurance Act is amended by deleting the definition of “broker” and substituting therefor the following new definition—

Amendment of section 2 of Cap. 487.

“broker” means an intermediary involved with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage commission for or on behalf of an insurer, policyholder or proposer for insurance or reinsurance and includes a medical insurance provider.

**56.** Section 20 of the Insurance Act is amended by deleting subsection (3).

Amendment of section 20 of Cap. 487.

**57.** The Insurance Act is amended by inserting the following new section immediately after section 21 —

Insertion of new section in Cap. 487.

Closed fund business.

21A. (1). In this section, “closed fund business” means the continuance of insurance business for the purpose of maintaining, without renewal, any policy or contract of insurance issued before the appointed date.

(2) Subject to sections 10 and 123(1)(b), an insurer may carry on closed fund business without registration under section 19.

(3) Where the policy or contract of insurance remains unpaid or undischarged, all the provisions of this Act shall apply to that insurer unless the Minister, in writing, specifically exempts the insurer from any of the provisions of this Act.

(4) The Commissioner may, by notice in writing served on the insurer carrying on closed fund business, require the insurer to furnish the Commissioner within a period not exceeding three months the particulars of the insurance business in Kenya as the Commissioner may specify in the notice.

(5) A person who contravenes the provisions of subsections (2) and (3)

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings and, if the offence is a continuing one, to a further fine of ten thousands shillings for each day during which the offence continues.

(6) The penalty imposed under subsection (5) shall be paid into the Policyholders Compensation Fund.

(7) A person shall not dispose of any assets from a closed fund except with the prior approval of the Commissioner.

**58.** Section 31 of the Insurance Act is amended by adding the following new subsection immediately after subsection (2)— Amendment of section 31 in Cap. 487.

(3) An insurer issued with a license under this Act shall pay the prescribed annual fee.

**59.** Section 5A of the Kenya Revenue Authority Act, 1995 is amended in subsection (2)— Amendment of section 5A of No. 2 of 1995.

- (a) by deleting the words “one hundred thousand” appearing in paragraph (a) and substituting therefor the words “five hundred thousand”;
- (b) by deleting the words “two million” appearing in paragraph (b) and substituting therefor the words “five million”.

**60.** Section 2 of the Retirement Benefits Act is amended— Amendment of section 2 of No. 3 of 1997.

- (a) in the definition of “retirement benefits scheme”, by inserting the words “or post-retirement medical cover” immediately after the words “form of payments”;
- (b) by inserting the following new definitions in their proper alphabetical sequence—

No. 17 of 2015. “corporate trustee” means a limited liability company incorporated under the Companies Act, 2015, which is,



for the time being, empowered under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers to mainly undertake trusts, and includes a trust corporation;

“post-retirement medical fund” means a fund established under this Act into which contributions are made and from which costs of medical benefits can be met in accordance with the medical fund rules;

**61.** Section 22 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 22 of No. 3 of 1997.

- (a) in the margin note, by inserting the words “corporate trustees” immediately after the words “managers”;
- (b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager”;
- (c) in subsection (3), by inserting the words “corporate trustees” immediately after the words “managers”;
- (d) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager”.

**62.** Section 23 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 23 of No. 3 of 1997.

- (a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**63.** The Retirement Benefits Act, 1997 is amended by inserting the following new section immediately after section 25B—

Insertion of new section 25C in No. 3 of 1997.

Requirements for  
the registration of  
corporate trustees.

25C. An applicant shall be registered by the Authority as a corporate trustee if that applicant—

- (a) has such minimum paid up share capital as may be prescribed by the Authority;
- (b) is capable of meeting the obligations to members and sponsors as specified in the scheme rules;
- (c) has the professional and technical capacity and adequate operational systems to perform its functions;
- (d) has never been a corporate trustee of any scheme fund which has been deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the corporate trustee;
- (e) has never been involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
- (f) has in its board of directors and senior management such number of persons as may be prescribed who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds; and

- (g) meets such additional requirements as may be prescribed by the Authority.

**64.** Section 27 of the Retirement Benefits Act, 1997 is amended— Amendment of section 27 of No. 3 of 1997.

- (a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**65.** Section 28 of the Retirement Benefits Act, 1997 is amended— Amendment of section 28 of No. 3 of 1997.

- (a) in subsection (3), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**66.** Section 29 of the Retirement Benefits Act, 1997 is amended— Amendment of section 29 of No. 3 of 1997.

- (a) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (3), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (c) in subsection (4), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (d) in subsection (5), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**67.** Section 30 of the Retirement Benefits Act, 1997 is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager”. Amendment of section 30 of No. 3 of 1997.

**68.** Section 31 of the Retirement Benefits Act is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager”. Amendment of section 31 of No. 3 of 1997.

**69.** Section 34 of the Retirement Benefits Act, 1997 is amended by inserting the following new subsection immediately after subsection (4E)—

Amendment of section 34 of No. 3 of 1997.

(4F) Despite the provisions of subsection (4)—

- (a) the Authority may, on application by the Trustees, extend the time specified in subsection (4) for a period not exceeding three months, if the extension appears justified; and
- (b) where an extension of time is granted, the penalty prescribed for late submission shall not apply for the extended period.

**70.** Section 41 of the Retirement Benefits Act, 1997 is amended—

Amendment of section 41 of No. 3 of 1997.

- (a) in subsection (1), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs;
- (b) in subsection (2), by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

**71.** Section 42 of the Retirement Benefits Act, 1997 is amended in subsection (1) by inserting the words “corporate trustee” immediately after the word “manager” wherever it occurs.

Amendment of section 42 of No. 3 of 1997.

**72.** Section 53B of the Retirement Benefits Act is amended by—

Amendment of section 53B of No.3 of 1997

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new sub-sections immediately after the existing provision—
  - (2) Where an employer has failed to remit contributions, the Trustees may with the approval of the Authority, appoint the Kenya Revenue Authority, as an agent, to collect unremitted contributions, interests, and penalties.
  - (3) Subject to subsection (2), the Trustees shall in writing request the Authority for approval and shall demonstrate that they have taken all reasonable effort to recover unremitted contributions from a defaulting employer without any success.
  - (4) The Authority shall either approve or reject the request in writing within twenty-one days from the date of receipt of the request.

(5) Despite subsection (2), where the Authority is of the opinion that the Trustees have failed or have not made reasonable effort to recover the unremitted contributions, interests and penalties, the Authority shall give notice to the Trustees instructing them to appoint the Kenya Revenue Authority as an agent to recover the unremitted contributions, interests and penalties.

(6) Upon appointment under subsection (2) or (5), the Kenya Revenue Authority shall issue a twenty-one-day notice in writing to the defaulting employer requiring it to remit the unremitted contributions, interests, penalties and recovery costs.

(7) Where an employer fails to comply with the notice, the Kenya Revenue Authority shall—

- (a) serve such employer and the employers bank with an agency notice;
- (b) attach the bank accounts of the defaulting employer; and
- (c) remit the attached funds to the Scheme, within thirty days.

(8) The cost of the recovery of unremitted contributions shall be borne by the defaulting employer.

**73.** Section 2 of the Central Depositories Act, 2000 is amended in subsection (1) by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 4 of 2000.

“authorized nominee” means a person appointed in writing by a beneficial owner or legal owner to open a securities account and transact on behalf of such beneficial owner or legal owner;

No. 17 of 2015. “beneficial owner” has the meaning assigned to it under the Companies Act, 2015;

“legal owner” means a person who holds the titles to securities or assets on behalf of a beneficial owner; and

“omnibus account” means an account held by an authorized nominee on behalf of two or more beneficial owners or legal owners.

**74.** Section 30 of the Central Depositories Act, 2000 is amended by adding the following new subsections immediately after subsection (2)—

Amendment of section 30 of No. 4 of 2000.

(3) A securities account opened with a central depository shall be in the name of the beneficial owner, legal owner or authorized nominee.

(4) A person who opens a securities account shall declare in the manner prescribed in the CDS rules whether the person is the beneficial owner of the deposited securities or the legal owner.

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

**75.** The Central Depositories Act, 2000 is amended by inserting the following new sections immediately after section 30—

Insertion of a new section in No. 4 of 2000.

Appointment of authorized nominees.

30A. (1) A beneficial owner or legal owner may appoint, in writing, a person to be the authorized nominee for the purpose of opening a securities account or, in the case of more than one beneficial or legal owner, an omnibus account in the name of the beneficial or legal owner or owners, as the case may be.

(2) An authorized nominee appointed under subsection (1) may deposit securities in the securities account or omnibus account on behalf of the beneficial or legal owners, as the case may be.

(3) The authorized nominee shall declare in the manner prescribed in the CDS rules the beneficial or legal owner of the securities deposited under subsection (2).

(4) A person who contravenes the provisions of this section commits an

offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or both.

Duties of authorized nominees.

30B. (1) An authorized nominee shall keep and maintain records on beneficial owners, legal owners, securities accounts or omnibus accounts in respect of the securities deposited in the securities or omnibus account in the manner prescribed in the CDS rules.

(2) An authorized owner shall, on request, furnish the central depository with such information as may be required on the beneficial owners, legal owners, securities accounts or omnibus accounts in respect of the securities deposited in the securities or omnibus account.

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

**76.** Section 32 of the Central Depositories Act, 2000 is amended by adding the following new paragraph immediately after paragraph (d)—

Amendment of section 32 of No. 4 of 2000.

(e) all purchases and sales of deposited securities and other dealings made in respect thereof, including the charges and credits arising therefrom, the identity of the buyer and seller of each of those deposited securities or, in the case of other dealings, the identity of the persons executing such dealings and the persons in whose favour the dealings are executed.