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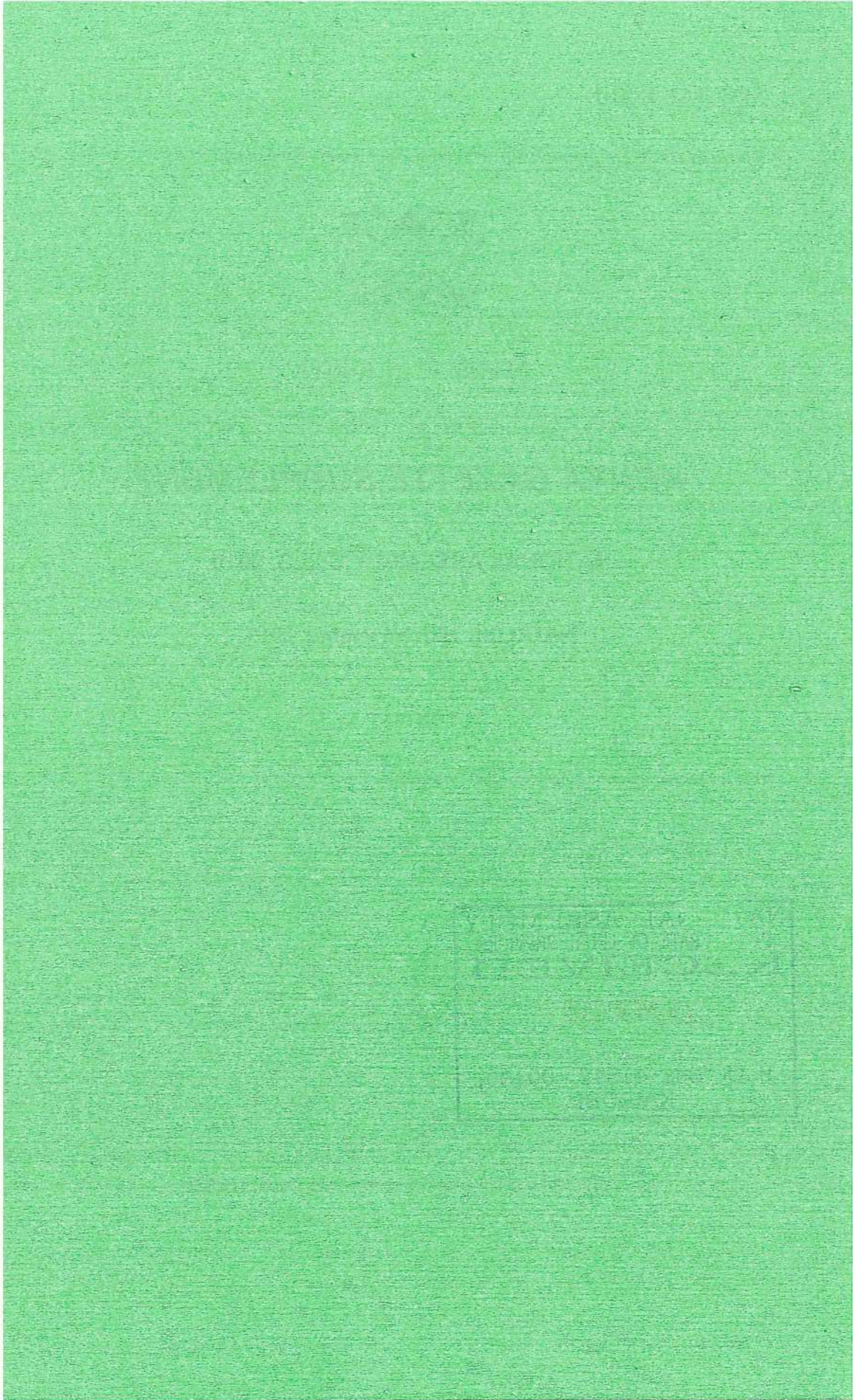
NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 18th November, 2019

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THE BUSINESS LAWS (AMENDMENT) BILL, 2019**A Bill for****AN ACT of Parliament to make amendments to various statutes to facilitate the ease of doing business in Kenya; and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Business Laws (Amendment) Act, 2019.

Short title.

2. Section 3(6) of the Law of Contract Act is amended in the definition of “sign” by inserting the words “physically or electronically” immediately after the word “initial”.

Amendment of section 3 of Cap. 23.

3. Section 5B of the Industrial Training Act is amended in subsection (3) by deleting the words “month or part of a month” and substitute therefor the word “year”.

Amendment of section 5B of Cap. 237.

4. Section 2 of the Registration of Documents Act is amended—

Amendment of section 2 of Cap. 285.

(a) in the definition of “book” by inserting the words “an electronic book” immediately after the word “includes”;

(b) in the definition of “signature” and “signed” by inserting the words “advanced electronic signature and electronic signature” immediately after the word “mark”;

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

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory may maintain under his or her sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.

5. Section 3 of the Registration of Documents Act is amended by—

Amendment of section 3 of Cap. 285.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after subsection (1)—

(2) The Registrar may establish and maintain the Principal and Coast registries in electronic form.

6. Section 4 of Registration of Documents Act is amended by—

Amendment of section 4 of Cap. 285.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following subsection immediately after subsection(1)—

(2) A person may register a document referred to in subsection (1) by filing it in physical or electronic form.

7. Section 2 of the Survey Act is amended by inserting the following new subsection in proper alphabetic sequence—

Amendment of section 2 of Cap. 299.

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory may maintain under his or her sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically

associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message.

“signature” includes an advanced electronic signature, an electronic signature, a mark or writing ones name or initials, making ones initials on the instrument as an indication that one intends to bind himself or herself to the contents of the instrument.

8. Section 5 of the Survey Act is amended by inserting the following new subsection immediately after subsection (2) —

Amendment of section 5 of Cap. 299.

(3) A document or plan that has been processed electronically and bears a prescribed security feature shall be deemed to bear the imprint of the seal of the Survey of Kenya.

9. Section 30 (1) of the Survey Act is amended by inserting the words “either physically or electronically” immediately after the word “Director”.

Amendment of section 30 of Cap. 299.

10. Section 32 of the Survey Act is amended by inserting the words “in accordance with section 5” immediately after the expression “Survey of Kenya”.

Amendment of section 32 of Cap. 299.

11. Part V of the Second Schedule to the Income Tax Act is amended by inserting the following new paragraph immediately after paragraph 24D —

Amendment of the Second Schedule to Cap. 470.

24E (1) Where capital expenditure of at least ten billion shillings is incurred on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway operations of a minimum storage of one hundred thousand metric tonnes of supplies, there shall be deducted, in computing the gains or profits of the person incurring the expenditure for the year of income in which the bulk storage facilities were first commenced or used a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under sub-paragraph (1) shall be

equal to one hundred and fifty per cent of the capital expenditure.

12. Section 2 of the Stamp Duty Act is amended by deleting the definition of “stamp” and substituting therefor the following new definition—

Amendment of section 2 of Cap. 480.

“stamp” means a mark embossed or impressed by electronic means or by means of a dye, franking machine or adhesive stamp.

13. Section 83B (1) of the Kenya Information and Communications Act is amended by deleting paragraph (c).

Amendment of section 83B of No. 2 of 1998.

14. Section 44 of the Occupational Safety and Health Act, 2007, is amended by inserting the following new subsections immediately after subsection (10)—

Amendment of section 44 of No. 15 of 2007.

(11) Where a person who occupies or uses any premises as a workplace has less than one hundred employees, the provisions of this section shall not apply for the first twelve months from the date of the registration of the business.

(12) The Cabinet Secretary may, through regulations, exempt certain premises from the application of subsection (11).

15. Section 5 of the National Construction Authority Act, 2011 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (g)—

Amendment of section 5 of No. 41 of 2011.

(ga) enforce the prescribed Building Code in the construction industry.

16. Section 23 of the National Construction Authority Act, 2011, is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 23 of No. 41 of 2011.

(3A) A person who willfully fails to comply with an order of an investigating 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.

17. The National Construction Authority Act, 2011, is amended by inserting the following new section immediately after section 23—

Insertion of new section 23A in No. 41 of 2011.

Mandatory inspections.

23A. (1) The Authority shall undertake mandatory inspections at any time on sites under constructions in accordance with section 5 (2) (g).

(2) The Cabinet Secretary may make regulations prescribing the manner of conducting mandatory inspections under subsection (1).

18. Section 2 of the Land Registration Act, 2012, is amended—

Amendment of section 2 of No. 3 of 2012.

- (a) in the definition of “instrument” by inserting the words “whether in physical or electronic form” immediately after the word “means”;
- (b) by inserting the following new definitions in proper alphabetical sequence—

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory may maintain under his or her sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.

“seal” includes an electronic seal.

“signature” includes an advanced electronic signature, an electronic signature, a mark or writing ones name or initials, making ones initials on the instrument as an indication that one intends to bind himself or herself to the contents of the instrument.

19. The Land Registration Act, 2012 is amended by deleting section 38.

Repeal of section 38 of No. 3 of 2012.

20. The Land Registration Act, 2012 is amended by deleting section 39.

Repeal of section 39 of No. 3 of 2012.

21. Section 44 of the Land Registration Act, 2012, is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 44 of No. 3 of 2012.

(3A) Where practicable, an instrument processed and executed electronically by persons consenting to it by way of an advanced electronic signature or an electronic signature shall be deemed to be a validly executed document.

22. Section 45 of the Land Registration Act, 2012, is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 45 of No. 3 of 2012.

(c) if the instrument has been electronically processed and executed by the parties consenting to it.

23. Section 83 of the Land Registration Act, 2012, is amended by—

Amendment of section 83 of No. 3 of 2012.

(a) renumbering the existing provision as subsection (1);

(b) inserting the following new subsections immediately after subsection (1)—

(2) A person claiming indemnity under section 81 shall apply to the Chief Land Registrar in the prescribed manner for investigation and consideration.

(3) Any person who is aggrieved with the decision of the Chief Land Registrar may appeal to the Court against the decision in the prescribed manner.

24. Section 39A of the Public Finance Management Act, 2012 is amended in sub-section (4) by deleting the words “and the Division of Revenue Act” appearing in paragraph (a).

Amendment of section 39A of No. 18 of 2012.

25. Section A of Part I of the First Schedule to the Value Added Tax Act, 2013 is amended by inserting the

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

following new paragraph immediately after paragraph 110—

111. Taxable supplies procured locally or imported for the construction of bulk storage and handling facilities with a minimum capital investment of ten billion shillings and a minimum storage capacity of one hundred thousand metric tonnes in support of the Standard Gauge Railway operations as approved by the Cabinet Secretary responsible for transport.

26. Part II of the First Schedule to the Value Added Tax Act, 2013 is amended by inserting the following new paragraph immediately after paragraph 31—

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

32. Taxable services procured locally or imported for the construction of bulk storage and handling facilities with a minimum capital investment of ten billion shillings and a minimum storage capacity of one hundred thousand metric tonnes in support of the Standard Gauge Railway operations as approved by the Cabinet Secretary responsible for transport.

27. Section 5 of the Business Registration Act, 2015 is amended in subsection (2) by deleting the word “trade” appearing in paragraph (c) and substitute therefor the words “business reforms and transformation”.

Amendment of section 5 of No. 15 of 2015.

28. Section 35 of the Companies Act is amended in subsection (1) (a) by deleting the words “under its common seal”.

Amendment of section 35 of No. 17 of 2015.

29. Section 37 of the Companies Act, 2015 is amended by deleting subsection (1).

Amendment of section 37 of No. 17 of 2015.

30. The Companies Act, 2015 is amended by deleting section 38.

Repeal of section 38 of No. 17 of 2015.

31. The Companies Act, 2015 is amended by deleting section 42.

Repeal of section 42 of No. 17 of 2015.

32. The Companies Act, 2015 is amended by deleting section 43.

Repeal of section 43 of No. 17 of 2015.

33. Section 495 of the Companies Act, 2015 is amended by deleting the words “under the common seal of

Amendment of section 495 of No. 17 of 2015.

the company” and substituting therefor the words “duly executed in accordance with section 37”.

34. Section 504 of the Companies Act, 2015, is amended by inserting the following new subsections immediately after subsection (2)—

Amendment of
section 504 of No.
17 of 2015.

(3) A company in respect of which a bearer share is in issue shall ensure that the share is converted into a registered share.

(4) Subsection (3) shall apply notwithstanding any contrary provision in the company’s memorandum or articles of incorporation.

(5) The company shall notify the Registrar within thirty days of the conversion of a bearer share into a registered share.

(6) A right attached to a bearer share shall not be exercised unless the bearer share is converted into a registered share.

(7) A company commits an offence if it fails or refuses to comply with subsection (3) within nine months of the coming into operation of subsection (3).

(8) A company, and each officer of the company, that contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings.

(9) If, after a company or any of its officers has been convicted of an offence under subsection (8), the company or officer continues to fail or refuse to comply with subsection (3), that company or that officer commits a further offence on each day of which the failure or refusal continues and on conviction shall be liable to a fine not exceeding fifty thousand shillings for each such offence.

35. Section 611 of the Companies Act, 2015 is amended—

Amendment of
section 611 of No.
17 of 2015.

- (a) in subsection (2) (a) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;
- (b) in subsection (2) (b) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;

- (c) in subsection (4) (a) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;
- (d) in subsection (4) (b) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”.

36. The Sixth Schedule to the Companies Act, 2015, is amended by deleting paragraph 21.

Amendment of Sixth Schedule to No. 17 of 2015.

37. Section 560A of the Insolvency Act, 2015 is amended by inserting the following new paragraphs immediately after paragraph (d)—

Amendment of section 560A of No. 18 of 2015.

- (e) whether the movable property that is the subject of the application is perishable or may cease to exist if approval is not granted; and
- (f) whether the movable property that is the subject of the application is used to maintain the company as a going concern.

38. The Insolvency Act, 2015 is amended by inserting the following new section immediately after section 723—

Insertion of new section 723A in No. 18 of 2015.

Information by insolvency practitioner.

723A. (1) A creditor may request information from a relevant insolvency practitioner and the insolvency practitioner shall provide the information within—

- (a) five business days after receiving the request; or
- (b) such longer period as may be agreed upon between the creditor and the insolvency practitioner.

(2) If the relevant insolvency practitioner is satisfied that an extension of time is required due to the nature of the request under subsection (1), the insolvency practitioner may, by notice to the creditor in writing, extend the period for providing the information.

(3) A notice under subsection (2) shall—

- (a) be given to the creditor making the request;

(b) specify the period within which the requested information shall be provided; and

(c) specify the reasons for the extension of time.

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

39. Paragraph 1 of Part I of the First Schedule to the Excise Duty Act, 2015 is amended by inserting the following new item—

Description	Rate
Imported Glass bottles	25%

Amendment of the
Second Schedule to
No. 29 of 2016.

40. Part A of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new paragraph immediately after paragraph (xxia)—

(xxib) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport.

Amendment of the
Second Schedule to
No. 29 of 2016.

41. Part B of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new paragraph immediately after paragraph (va)—

(vb) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport..

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

This Bill is intended to amend various statutes for the purposes of facilitating the ease of doing business in Kenya. It is divided into 41 clauses.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill provides for the amendment of section 3(6) of the Law of Contract Act in the definition of “sign” to include an advanced electronic signature and an electronic signature in that definition.

Clause 3 of the Bill provides for the amendment of section 5B (3) of the Industrial Training Act to provide that the training levy shall be an annual payment and not a monthly one and to align the penalty for failure to pay the levy with the new one-year compliance period.

Clause 4 of the Bill provides for the amendment of section 2 of the Registration of Documents Act to include definitions of electronic documents and various forms of electronic signatures in the section.

Clause 5 of the Bill provides for the amendment of section 3 of the Registration of Documents Act to authorize the Registrar to establish and maintain the Principal and Coast registries in physical and electronic form.

Clause 6 of the Bill provides for the amendment of section 4 of the Registration of Documents Act to provide for the filing of documents in physical and electronic form in the Registry.

Clause 7 of the Bill provides for the amendment of section 2 of the Survey Act to include the definitions of various forms of electronic signatures.

Clause 8 of the Bill provides for the amendment of section 5 of the Survey Act to provide for the sealing and security features of electronic documents that have been processed under the Act.

Clause 9 of the Bill provides for the amendment of section 30 of the Survey Act to allow the lodging of documents under the Act in either physical or electronic form.

Clause 10 of the Bill provides for the amendment of section 32 of the Survey Act to incorporate the electronic affixation of the Seal of the Survey of Kenya.

Clause 11 of the Bill provides for the amendment of the Income Tax Act in order to provide for investments deductions on capital expenditure incurred for the construction of bulk storage facilities for supporting the Standard Gauge Railway.

Clause 12 of the Bill provides for the amendment of section 2 of the Stamp Duty Act, in the definition of “stamp” to include a stamp’s electronic features in the definition.

Clause 13 of the Bill provides for the amendment of section 83B of the Kenya Information and Communications Act, 1998, to provide for electronic means of authenticating and signing documents.

Clause 14 of the Bill provides for the amendment of the Occupational Safety and Health Act, 2007, to provide for the exclusion of certain workplaces of employers with less than one hundred employees from the application of section 44 and exemptions granted by the Cabinet Secretary in respect of the same premises.

Clause 15 of the Bill provides for the amendment of section 5 of the National Construction Authority Act, 2011, to authorize the Authority to enforce the Building Code in the construction industry.

Clause 16 of the Bill provides for the amendment of section 23 of the National Construction Authority Act, 2011, to provide for the penalty to be imposed on a person who fails to comply with an order of an investigating officer in order to ensure compliance with the construction standards and minimize defects in execution and post-construction stages of projects.

Clause 17 of the Bill provides for the amendment of the National Construction Authority Act, 2011, to insert a new section 23A to authorize the Authority to conduct mandatory inspections of construction sites and the making of regulations in respect of the same.

Clause 18 of the Bill provides for the amendment of section 2 of the Land Registration Act, 2012, to include the definitions of various forms of electronic signatures.

Clause 19 of the Bill provides for the amendment of the Land Registration Act, 2012, by deleting section 38 to do away with requirements for land rates certificates to be obtained before an instrument transferring interest in land is registered.

Clause 20 of the Bill provides for the amendment of the Land Registration Act, 2012, by deleting section 39 to do away with the requirement for land rent certificates and the requirement of consent before an instrument transferring an interest in land is registered.

Clause 21 of the Bill provides for the amendment of section 44 of the Land Registration Act, 2012, to provide for the use of electronic signatures in the execution of documents processed under the Act.

Clause 22 of the Bill provides for the amendment of section 45 of the Land Registration Act, 2012, to recognize the execution of documents using electronic signatures.

Clause 23 of the Bill provides for the amendment of section 83 of the Land Registration Act, 2012, to provide for the procedure to be followed when a person claims indemnity under section 81 of the Act.

Clause 24 of the Bill provides for the amendment of section 39A of the Public Finance Management Act, 2012 to clean up the process of introducing the Finance Bill in the National Assembly.

Clause 25 of the Bill provides for the amendment of Part I of the First Schedule to the Valued Added Tax, 2013 to provide for exemption of taxable supplies procured locally or imported for the construction of bulk storage in support of the Standard Gauge Railway operations.

Clause 26 of the Bill provides for the amendment of Part II of the First Schedule to the Valued Added Tax, 2013 to provide for exemption of taxable services procured locally or imported for the construction of bulk storage in support of the Standard Gauge Railway operations.

Clause 27 of the Bill provides for the amendment of section 5 of the Business Registration Act, 2015, to provide that the respective Cabinet Secretary shall be the one responsible for business reforms and transformation. This is intended to align the mandate of doing business with the Ministry coordinating ease of doing business reforms.

Clause 28 of the Bill provides for the amendment of section 35 of the Companies Act, 2015, to provide that contracts made by companies shall no longer require company seals.

Clause 29 of the Bill provides for the amendment of section 37 of the Companies Act, 2015, to provide that documents executed on behalf of companies shall no longer require to be sealed with company seals.

Clause 30 of the Bill provides for the amendment of the Companies Act, 2015, by deleting section 38 which relates to the common seal of a company.

Clause 31 of the Bill provides for the amendment of the Companies Act, 2015, by deleting section 42 which relates to the official seal for use by a company outside the country.

Clause 32 of the Bill provides for the amendment of the Companies Act, 2015, by deleting section 43 which provides for an official seal for sealing share certificates.

Clause 33 of the Bill provides for the amendment of section 495 of the Companies Act, 2015 to delete references to the common seal of a company.

Clause 34 of the Bill provides for the amendment of section 504 of the Companies Act, 2015, to provide for the treatment of bearer shares which existed before the coming into operation of the Act.

Clauses 35 of the Bill provides for the amendment of sections 611 of the Companies Act, 2015, to raise the applicable thresholds for “squeezing-in” and “selling-out” of shares in a company to control of at least ninety percent of the shares of the company.

Clause 36 of the Bill provides for the amendment of the Sixth Schedule to the Companies Act, 2015, by deleting paragraph 21 of the Schedule which relates to share warrants issued before the coming into force of the Act.

Clause 37 of the Bill provides for the amendment of section 560A of the Insolvency Act, 2015, to provide that the court shall take into consideration the perishability of a movable asset and whether or not it used to maintain the company as a going concern before lifting a moratorium imposed under section 560 of the Act to protect secured creditors’ rights by providing clear grounds for relief from the stay within a specified time limit.

Clause 38 of the Bill provides for the amendment of the Insolvency Act, 2015 by inserting a new provision dealing with the manner of processing requests of information by creditors from insolvency practitioners.

Clause 39 of the Bill provides for the amendment of the Excise Duty Act in order to encourage local manufacturing of glass bottles.

Clause 40 of the Bill provides for the amendment of Part A of the Second Schedule to the Miscellaneous Fees and Levies Act in order to exempt goods imported for the construction of bulk storage and handling facilities in support of the standard gauge railway from import declaration fee.

Clause 41 of the Bill provides for the amendment of Part B of the Second Schedule to the Miscellaneous Fees and Levies Act in order to exempt goods imported for the construction of bulk storage and handling facilities in support of the standard gauge railway from the railway development levy.

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

This Bill delegates legislative powers to the responsible Cabinet Secretary under the National Survey Act and the Land Registration Act, 2012 for purposes of prescribing appropriate regulations for the better carrying into effect of the provisions of the Acts.

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

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

ADEN DUALE,
Leader of the Majority Party.

Law of Contract Act (Cap. 23)

Section 3(6) which is proposed to be amended—

“sign”, in relation to a contract, includes making one’s mark or writing one’s name or initial on the instrument as an indication that one intends to bind himself to the contents of the instrument and in relation to a body corporate includes—

- (a) signature by an attorney of the body corporate duly appointed by a power of attorney registered under the Registration of Documents Act (Cap. 285);
- (b) the affixing of the common seal of the body corporate in accordance with the constitution or the articles of association of the body corporate, as the case may be, in which case no further attestation shall be required

The Industrial Training Act (Cap. 237)

Section 5B(3) which is proposed to be amended —

5B. Training levy

- (3) If any person fails to pay an amount payable by him by way of the training levy within the time prescribed by the training levy order a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.

The Registration of Documents Act (Cap. 285)

Section 2 which is proposed to be amended —

2. Interpretation

In this Act, except where the context otherwise requires—

“book” includes a portion of a book, and also any number of sheets connected together with a view to forming a book or portion of a book;

“endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act,

“immovable property” includes land, buildings, hereditary allowances, rights of way, lights, ferries, fisheries and any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber (except coconut trees), growing crops or grass;

“minor” means a person who has not attained the age of eighteen years;

“Principal Registrar” means such person as may be appointed by the Minister to exercise the duties of the Principal Registrar of Documents;

“registrar” means any person appointed by the Minister to exercise the duties of a registrar of documents;

“representative” includes the guardian of a minor, and the committee or other legal representative of a lunatic or idiot;

“signature” and “signed” include and apply to the fixing of a mark.

Section 3 which is proposed to be amended—

3. Registries

A registry shall be kept at Nairobi for the whole of Kenya except the Coast Province, and shall be known as the Principal Registry, and another registry shall be kept at Mombasa for the Coast Province only, and shall be known as the Coast Registry.

Section 4 which is proposed to be amended—

4. Documents to be registered

All documents conferring, or purporting to confer, declare, limit or extinguish any right, title or interest, whether vested or contingent to, in or over immovable property (other than such documents as may be of a testamentary nature) and vakallas shall be registered as hereinafter prescribed:

Provided that the registration of the documents following shall not be compulsory—

- (i) any composition deed;
- (ii) any document relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property;
- (iii) any debenture issued by such a company, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to, in or over any immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures;
- (iv) any endorsement upon or transfer of any debenture issued by any such company;

- (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to, in or over any immovable property but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;
- (vi) any lease or licence of land for any term not exceeding one year; or
- (vii) any document registrable under the provisions of the Government Lands Act:

Provided that, if any such document relates to land registrable under any such Act and also to land not so registrable, such document shall also be registered under this Act.

The Survey Act (Cap. 299)

Section 5 which is proposed to be amended—

5. Seal of Survey of Kenya

(1) The Director shall have and use a seal of office bearing the impression of the badge of the Survey Department and having inscribed thereon "Survey of Kenya", and the imprint of such a seal shall be valid whether impressed or made in wax, ink or any other substance.

(2) The seal of the Survey of Kenya shall not be used or affixed except by the Director or by some person authorized by the Director in writing in that behalf.

Section 30 which is proposed to be amended—

30. All survey plans and records to be deposited with Director and to become property of Government

(1) Every surveyor who executes any survey in accordance with the provisions of this Act and of any regulations made thereunder shall send to the Director all plans, field notes and computations relating thereto, and all such plans, field notes and computations shall be deposited in the Survey Office and shall become the property of the Government.

Section 32 which is proposed to be amended—

32. Authentication of plans

No land shall be deemed to have been surveyed or resurveyed until the plan thereof has been authenticated by the signature of the Director or of a Government surveyor authorized in writing by the Director in that behalf, or by the affixing of the seal of the Survey of Kenya.

The Stamp Duty Act (Cap. 480)

Section 2 which is proposed to be amended—

“stamp” means a stamp embossed or impressed by means of a die or a franking machine, or an adhesive stamp;

The Kenya Information and Communications Act (No. 2 of 1998)

Section 83B which is proposed to be amended—

83B. Application

(1) This Part shall not apply to any rule or law requiring writing or signatures in any of the following matters—

- (a) the creation or execution of a will;
- (b) negotiable instruments;
- (c) documents of title.

The Occupational Safety and Health Act (No. 15 of 2007)

Section 44 which is proposed to be amended—

44. Registration of workplaces

(1) Before any person occupies or uses any premises as a workplace, he shall apply for the registration of the premises by sending to the Director a written notice containing the particulars set out in the Fourth Schedule.

(2) Upon receipt of the notice referred to in subsection (1), the Director shall take such steps as may be necessary to satisfy himself that the premises are suitable for use as a workplace of the nature stated in the notice, and upon being so satisfied, shall cause the premises to be registered and shall issue to the applicant, upon payment of a prescribed fee, a certificate of registration in the form set out in the Fifth Schedule.

(3) The Director shall carry out the duties imposed upon him by this section with all practicable speed.

(4) All workplaces which were registered under the Factories and Other Places of Work Act (now repealed) shall be deemed to have been registered under this Act.

(5) Any person who, without having been issued with a certificate of registration under subsection (2), occupies or uses any premises as a workplace commits an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months, or to both, and, if the contravention in respect to which he is convicted is continued after the conviction, he shall

be guilty of a further offence and liable in respect thereof to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding seven days, or to both, for each day on which the offence is continued.

(6) Where the Director refuses to issue a certificate of registration under this section he shall state in writing the grounds of such refusal.

(7) The occupier of a workplace registered under this Act shall notify the Director in writing of any proposed change in the registered particulars of that workplace prior to effecting the change.

(8) The occupier of a workplace who fails to comply with the provisions of subsection (7) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

(9) A person who is aggrieved by a decision of the Director made under this section may, within fourteen days from the date of the decision, appeal to an appeal committee appointed by the Minister under section 46.

(10) The Minister may, after consultation with the Council, make regulations to provide for—

- (a) workplaces to be excepted from registration under this Act;
- (b) the registration of premises where employees perform any work or where plant or machinery is used and the fee payable in respect of such registration;
- (c) the registration of plant and machinery and the fee payable in respect of such registration.

The National Construction Authority Act (No. 41 of 2011)

Section 5 which is proposed to be amended—

5. Functions of the Authority

(1) The object for which the Authority is established is to oversee the construction industry and coordinate its development.

(2) Without prejudice to the generality of subsection (1), the Authority shall—

- (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 this 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 co-ordinate training programmes organized by public and private accredited training centers for skilled construction workers and construction 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; and
- (n) do all other things that may be necessary for the better carrying out of its functions under the Act.

Section 23 which is proposed to be amended—

23. Appointment of investigating officers

(1) The Board may, for the purpose the performance of its functions under section 21, appoint such number of investigating officers, to be known as investigating officers of the Board, as it considers necessary for the purposes of carrying out the investigation of any offence or inspection under this Act.

(2) An investigating officer shall, for the purpose of ascertaining whether the provisions of this Act or any regulations made thereunder are being complied with, have power at all reasonable times to enter into any construction site where construction works are being carried out and make such enquiry or inspection as may be necessary for the purposes of the functions of the investigating officer.

(3) In the course of an investigation or inspection under this section an investigating officer may—

- (a) put questions concerning the registration of any contract, the accreditation and certification of the skilled construction workers and construction site supervisors or the payment of levy, and all the persons to whom the questions are addressed shall be legally bound to answer such questions truthfully to the best of their ability;
- (b) require any person to produce any records required to be kept under this Act, and may seize them or take copies of them; or
- (c) by notice in writing order the suspension of all or any part of the works in respect of which the provisions of this Act have not been complied with until the time of such compliance.

(4) Every investigating officer when exercising any powers under this Act, shall identify himself as such to the person affected and produce written authority for the exercise of such powers.

(5) Upon completion of an investigation, the investigating officer shall, where the investigation reveals an offence under this Act or any Regulations made thereunder, immediately give all information relating to the offence to an officer in charge of a police station, and that officer may, by warrant, arrest any person who may have committed such offence.

The Land Registration Act, 2012

Section 2 which is proposed to be amended—

“instrument” means—

- (a) any writing, including an enactment that creates or affects legal or equitable rights or liabilities;
- (b) any covenant or condition expressed in an instrument or implied in an instrument under this or any other enactment relating to land; or
- (c) any variation of an instrument, except where otherwise provided;

Section 38 which is proposed to be amended—

38. Certificates of payment of rates

(1) The Registrar shall not register any instrument transferring or vesting any land, a lease of land, situated within the area of a rating authority unless, a written statement, by the relevant government agency, certifying that all outstanding rates and other charges payable to the agency in respect of the land including rates and charges for the last twelve months and up to the date of request for transfer have been paid there is produced to the Registrar.

(2) No statement shall be required under subsection (1) if the instrument relates to—

- (a) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or
- (b) deleted by Act No. 28 of 2016, s. 15(b).

Section 39 which is proposed to be amended—

39. Certificates as to payment of rent

(1) The Registrar shall not register an instrument purporting to transfer or create an interest in land, unless a certificate is produced with the instrument, certifying that no rent is owing to the national or county governments in respect of the land.

(2) The Registrar shall not register an instrument effecting a transaction unless satisfied that any consent required to be obtained in respect of the transaction has been given by the national or county government on the use of the land, or that no consent is required.

Section 44 which is proposed to be amended—

44. Executions of instruments in writing

(1) Except as otherwise provided in this Act, every instrument effecting any disposition under this Act shall be executed by each of the parties consenting to it, in accordance with the provisions of this section.

(2) The execution of any instrument referred to in subsection (1), by a person shall consist of appending a person's signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instrument.

(3) The execution of any instrument referred to in section (1) by a corporate body, association, cooperative society or other organisation shall be effected in accordance with the provisions of the relevant applicable law and in the absence of provisions on execution of instruments, the execution shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

(4) An instrument executed outside Kenya shall not be registered unless it has been endorsed or is accompanied by a certificate in the prescribed form completed by a notary public or such other person as the Cabinet Secretary may prescribe.

(5) The transferee shall in addition to executing the instrument, attach the following—

- (a) a copy of an identity card or passport; and

- (b) a copy of a Personal Identification Number certificate;
- (c) passport size photographs;
- (d) where applicable, a marriage certificate;
 - (dd) a copy of the certificate of incorporation, in the case of a corporate entity; or
- (e) such other identification documents as the Cabinet Secretary may prescribe.

Section 45 which is proposed to be amended—

45. Verification of execution

(1) Subject to subsection (3), a person executing an instrument shall—

- (a) appear before the Registrar, public officer or other person as is prescribed; and
- (b) be accompanied by a credible witness for the purpose of establishing identity, unless the person is known to the Registrar, public officer or other person.

(2) The Registrar, public officer or other person shall identify the person and ascertain whether the person freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.

(3) The Registrar may dispense with verification under this section—

- (a) if the Registrar considers that it cannot be obtained or it can only be obtained only with difficulty and is otherwise satisfied that the document has been properly executed; or
- (b) if the Registrar knows the document has been properly executed, and shall record on the document the reasons for dispensing with the appearance of the parties.

Section 83 which is proposed to be amended—

83. Procedure for claiming indemnity

The Court may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, award indemnity, and may add any costs and expenses properly incurred in relation to the matter.

Public Finance Management Act (No. 18 of 2012)

Section 39A which is proposed to be amended—

39A. Submission, consideration and passing of Finance Bill

(1) The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be assented to by 30th June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall—

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;
- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

The Business Registration Act (No. 15 of 2015)

Section 5(2) which is proposed to be amended—

(2) The Board shall consist of—

- (a) a chairperson;
- (b) the Solicitor-General or his representative;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade or his representative;
- (d) the Principal Secretary in the National Treasury or his representative;
- (e) four other members; and
- (f) the Director-General, who shall be an *ex-officio* member.

The Companies Act (No. 17 of 2015)

Section 35 which is proposed to be amended—

35. Company contracts

(1) A contract may be made—

- (a) by a company, in writing under its common seal; or
- (b) on behalf of a company, by a person acting under its authority, express or implied.

(2) Any formalities required by law for a contract made by a natural person also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

Section 37 which is proposed to be amended—

37. Execution of documents

(1) A document is executed by a company—

- (a) by the affixing of its common seal (if any) and witnessed by a director; or
- (b) in accordance with subsection (2).

(2) A document is validly executed by a company if it is signed on behalf of the company—

- (a) by two authorised signatories; or
- (b) by a director of the company in the presence of a witness who attests the signature.

(3) A document in favour of a purchaser is effectively executed by a company if it purports to be signed in accordance with subsection (2).

(4) For purpose of subsection (3), "purchaser" means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(5) If a document is to be signed by a person on behalf of more than one company, it is not effective for the purposes of this section unless the person signs it separately in each capacity.

(6) A reference in this section to a document being, or purporting to be, signed by a director or secretary is, if that office is held by a firm, to be read as a reference to its being, or purporting to be, signed by a natural person authorised by the firm to sign on its behalf.

(7) This section applies to a document that is, or purports to be, executed by a company in the name of, or on behalf of, another person (whether or not that person is also a company).

Section 38 which is proposed to be amended—

38. Company may have common seal for execution of documents

(1) A company may have a common seal.

(2) A company that has a common seal shall ensure that its name is engraved on the seal in legible characters.

(3) If a company fails to comply with subsection (2), the company, and each officer of the company who is in default, commits an offence.

(4) A person to whom this subsection applies who uses or authorises the use of a seal that purports to be a seal of a company commits an offence if the company's name is not engraved on the seal as required by subsection (2).

(5) Subsection (4) applies to being an officer of the company or a person acting, or purporting to act, on behalf of the company,

(6) A person found guilty of an offence under this section is on conviction liable to a fine not exceeding five hundred thousand shillings.

Section 42 which is proposed to be amended—

42. Official seal for use outside Kenya

(1) A company that has a common seal may have an official seal for use outside Kenya.

(2) A company that has an official seal shall ensure that it is a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.

(3) A company's official seal has, when duly affixed to a document, the same effect as the common seal of the company.

(4) A company that has an official seal may, in writing, authorise any person appointed for the purpose to affix it to a deed or other document to which the company is a party and which is to be executed in a place specified on its face.

(5) If a company has appointed an agent for purposes of subsection (4), the authority of the agent when dealing with a company or another person continues—

(a) during the period specified in the document conferring the authority; or

(b) if no period is specified, until notice of the revocation or termination of the authority of the agent has been given to the company or person dealing with the agent.

(6) The person affixing the official seal of a company shall certify in writing on the deed or other document to which the seal is affixed—

- (a) the date on which; and
- (b) the place at which it is affixed.

(7) Failure to comply with subsection (6) renders the deed or other document void so far as the company is concerned.

Section 43 which is proposed to be amended—

43. Official seal for share certificates etc

(1) A company that has a common seal may have an official seal for use in sealing—

- (a) securities issued by the company; or
- (b) documents creating or evidencing securities so issued.

(2) seal is effective as a company's official seal for the purpose of subsection (1) only if it is a facsimile of the company's common seal with the addition on its face of the word "securities".

(3) When duly affixed to a document, an official seal has the same effect as the company's common seal.

Section 495 which is proposed to be amended—

495. Share certificate to be evidence of title

A certificate under the common seal of the company specifying any shares held by a member is, in the absence of proof to the contrary, evidence of the member's title to the shares.

Section 611 of which is intended to amend—

611. Right of offeror to buy out minority shareholder

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

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

contracted to acquire that the offeror intends to acquire those shares.

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

- (a) not less than fifty percent in value of the shares to which the offer relates; and
- (b) if the shares of that class are voting shares —not less than fifty percent of the voting rights conferred by those shares,

may give notice to the holder of any shares of that class to which the offer relates that the offeror has not acquired or unconditionally contracted to acquire that the offeror intends to acquire those shares.

The Sixth Schedule which is proposed to be amended—

21. Share warrants issued by existing companies

Share warrants issued by an existing company under section 85 of the repealed Act and having effect before the repeal of that section continue to have effect after that repeal even though the company could not issue share warrants after that repeal and section 87 of that Act continues to have effect in respect of those share warrants as if that repeal had not taken effect.

Insolvency Act (No. 18 of 2015)

Section 560A which is proposed to be amended—

560A. Considerations for approval to lift moratorium

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

- (a) the statutory purpose of the administration;
- (b) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
- (c) the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant; and
- (d) the conduct of the parties.

