

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 228 (National Assembly Bills No. 50)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

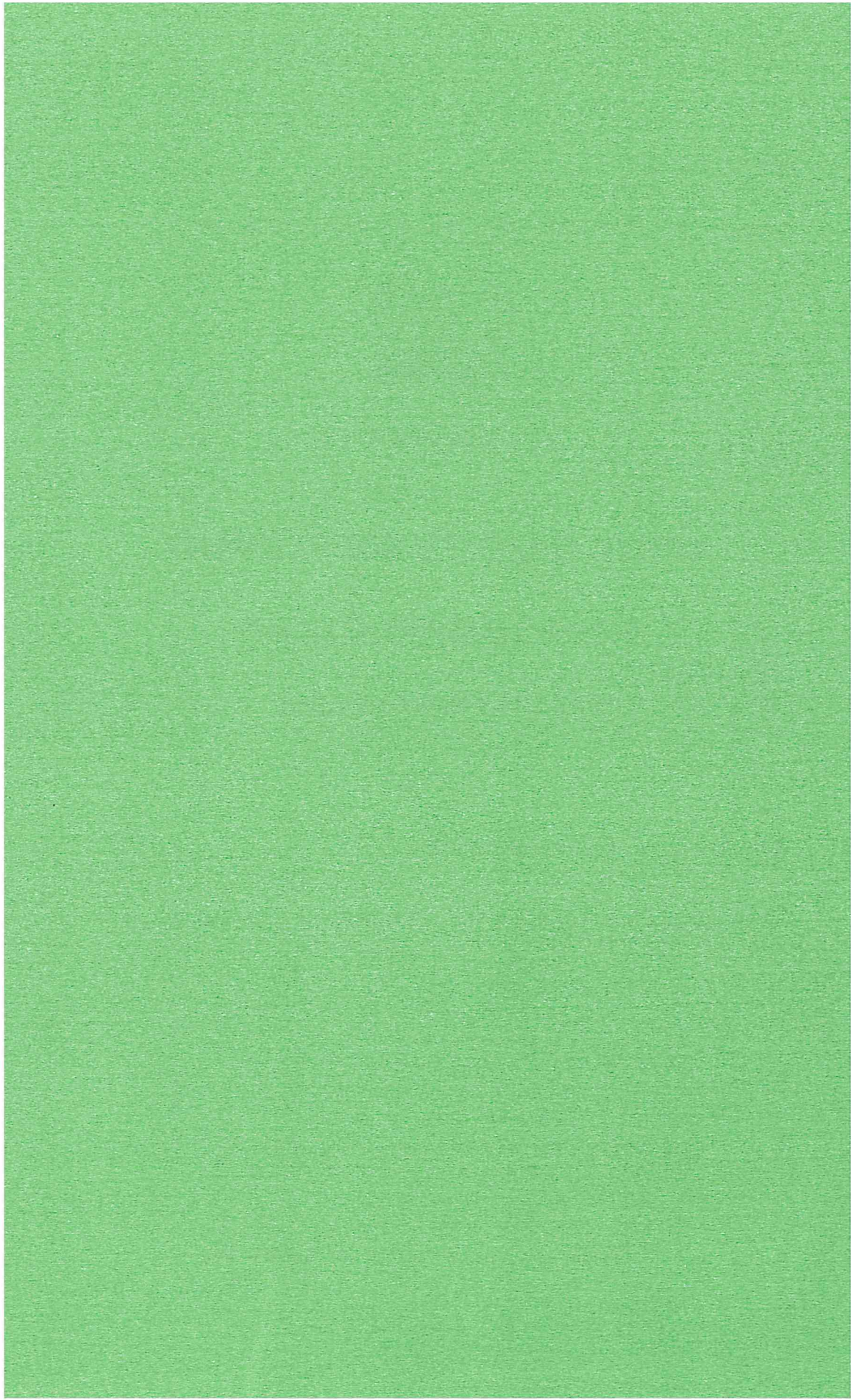
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**NAIROBI, 14th December, 2020**

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

**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) (No.2) Act, 2020 and shall come into force upon assent.

Short title and commencement.

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

Amendment of section 3 of Cap 23.

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

**3.** Section 5B of the Industrial Training Act is amended by inserting the following proviso at the end of subsection (2)—

Amendment of section 5B of Cap. 237

Provided that the amount payable under the levy shall be remitted at the end of the financial year of the business but not later than the ninth day of the month following end of the financial year.”

**4.** Section 117 of the Stamp Duty Act is amended by inserting the following new paragraph immediately after paragraph (o)—

Amendment of section 117 of Cap 480 .

(p) fixed duty of one hundred shillings charged on contracts to be chargeable as conveyances on sale under section 49.

**5.** Section 15 of the National Hospital Insurance Fund is amended in subsection (4) by deleting the word ‘first’ and substituting therefor the word “ninth”.

Amendment of section 15 of 9 of 1998.

**6.** Section 2 of the National Construction Authority Act is amended by inserting the following new definition in proper alphabetical sequence—

Amendment of section 2 of No. 41 of 2011.

“building” means any construction work that has the provision of shelter for its occupants or

contents as one of its main purposes and includes a public and private building;

“defect” means deficiency in the design, the workmanship, and in the materials or systems used in the construction of a building or failure in maintenance of the building that results in a failure of a component part of a building or structure resulting in partial or total collapse of the building or renders the building unfit for occupation and includes structural defects and latent defects;

“relevant professional” means a person who is registered —

- (a) as an engineer under the Engineers Act, 2011; or
- (b) as an architect or quantity surveyor under the Architects and Quantity Surveyors Act.

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

Amendment of section 22 of No. 41 of 2011.

Inquiry into defects in a building

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

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

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

- (a) outline the findings on the cause of the defects in the building and the liability of the defects apportioned either on the contractor, relevant professional or the owner of the building;
- (b) recommend appropriate remedial action against the contractor in accordance with the Act; and

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

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

8. Section 54 of the Land Registration Act is amended—

Amendment of section 54 of No. 3 of 2012.

- (a) in subsection (1), by deleting the words “the lessee” appearing immediately after the words “express or implied, by ” and substituting therefore the words “the lessor”;

- (b) in subsection (2), by deleting paragraph (c).

9. The Land Registration Act is amended by repealing section 55 and replacing it with the following new section—

Repeal and replacement of section 55 of No. 3 of 2012.

Lessor's consent to dealing with leases.

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

(2) The Registrar shall not register any instrument purporting to transfer or create any interest in that land.

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

Insertion of new section 55A in No. 3 of 2012.

Lessor's consent on government leases.

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

11. Section 56 of the Land Registration Act is amended—

Amendment of section 56 of No.3 of 2012.

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

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

(a) by the chargor;

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

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

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

(4) The registrar shall not register a charge unless the consent to charge has been presented.

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

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

(d) by deleting subsection (5A).

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

Amendment of section 64 of No.3 of 2012.

(a) deleting the words 'sealed with the common seal of the company' appearing immediately after the

words “entered under subsection (1)” and substituting therefor the words “executed in accordance with section 37 of the Companies Act, 2015”; and

- (b) deleting the words ‘in the case of a company not required by law to have a common seal, and’.

**13.** Section 20 of the National Social Security Fund Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 20 of No. 45 of 2013.

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

**14.** Section 3 of the Companies Act is amended—

Amendment of section 2 of No. 17 of 2015.

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

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

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

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

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

Amendment of section 283 of No. 17 of 2015.

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

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

Amendment of section 285 of No. 17 of 2015.

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

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

Amendment of the Sixth Schedule to No. 17 of 2015.

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

Amendment of section 474 of No. 18 of 2015.

(5) Subsection (2) does not apply to a company if—

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

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

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

**19.** The Insolvency Act is amended—

Amendment of the subheading of Part IXA of No. 18 of 2015.

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

“PART IXA – PRE-INSOLVENCY MORATORIUM”; and

(b) by deleting the subheading “Subdivision 1” appearing immediately before section 636 and substituting therefor the subheading “Division 1”

**20.** Section 636 of the Insolvency Act is amended—

Amendment of section 636 of No. 18 of 2015.

(a) in subsection (1) —



- (i) by deleting the subheading “Division” and substituting therefor the subheading “Part”;
- (ii) by deleting the definition of the term “proposal”;
- (iii) by inserting the following new definition in proper alphabetical sequence—  
“monitor” means the person designated as such under section 643(2)(b);
- (iv) by deleting the definition of the term “moratorium committee”; and

(b) by deleting subsection (2).

**21.** Section 637 of the Insolvency Act is amended —

Amendment of section 637 of No. 18 of 2015.

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

(b) by deleting paragraph (d).

**22.** Section 638 of the Insolvency Act is amended—

Amendment of section 638 of No. 18 of 2015.

(a) in paragraph (b), by deleting the word ‘Subdivision’ and substituting therefor the word ‘Part’; and

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

(c) is financially distressed’

**23.** Section 640 of the Insolvency Act is amended—

Amendment of section 640 of No. 18 of 2015.

(a) in paragraph (e), by deleting subparagraphs (i) and (ii);

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

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

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

Repeal of section 642 of No. 18 of 2015.

**25.** The Insolvency Act is amended by deleting the subheading “Subdivision 2” appearing immediately after

Amendment of the subheading in No. 18 of 2015.

section 642 and substituting therefor the subheading “Division 2.”

**26.** Section 643 of the Insolvency Act is amended—

Amendment of  
section 643 of No.  
18 of 2015.

- (a) by deleting subsection (1);
- (b) in subsection (2)—
  - (i) by deleting paragraph (a)(i) and substituting therefor the following new paragraph—
    - (a) a document setting out why a moratorium is desirable, which may include evidence that it will assist in agreeing an informal restructuring or other agreement with creditors or entering a formal insolvency procedure which could lead to the rescue or efficient liquidation of the company;
  - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
    - (b) appoint as its monitor an authorised insolvency practitioner who has consented to supervise it;
- (c) by deleting subsection (3) and substituting therefor the following new paragraph—

(3) The directors shall submit the documents required under subsection (2) to the monitor for consideration and comment.
- (d) in subsection (4)—
  - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor” wherever it appears in the subsection;
  - (ii) by deleting the words “that supervisor” and substituting therefor the words “the monitor”;
- (e) in subsection (5)—
  - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
  - (ii) by deleting paragraph (a) and substituting therefor the following new paragraph—

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

(iii) by deleting paragraph (c);

(f) in subsection (6)—

(i) by deleting the words “provisional supervisor” appearing immediately after the words “in subsection (5)” and substituting therefore the word “monitor”;

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

(g) in subsection (7) by deleting the word “it” appearing immediately after the word “carry”.

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

Amendment of section 644 of No. 18 of 2015.

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

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

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

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

(d) a statement from the monitor that, in the monitor’s opinion—

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

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

28. Section 645 of the Insolvency Act is amended—

Amendment of section 645 of No. 18 of 2015.

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

(2) A moratorium ends after thirty days from and including the day on which the moratorium

takes effect, unless the moratorium period is extended under section 669.

- (b) by deleting subsection (3);
- (c) by deleting subsection (6);
- (d) by deleting subsection (7); and
- (e) in subsection (8), by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (2)”.

**29.** Section 646 of the Insolvency Act is amended—

Amendment of section 646 of No. 18 of 2015.

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

**30.** Section 647 of the Insolvency Act is amended—

Amendment of section 647 of No. 18 of 2015.

- (a) in the marginal note, by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1)—
  - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
  - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
    - (b) give a notice to the effect that the moratorium has taken effect to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium; and
- (c) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (d) in subsection (3)—
  - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

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

**31.** Section 648 of the Insolvency Act is amended —

Amendment of section 648 of No. 18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1), —
  - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
  - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph —
    - (b) give to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium a notice to the effect that the moratorium has ended; and
- (c) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (d) in subsection (3) —
  - (iii) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
  - (iv) by deleting the words “that supervisor” and substituting therefor the words “the monitor”.

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

Amendment of the subheading in No. 18 of 2015.

**33.** Section 649 of the Insolvency Act is amended —

Amendment of section 649 of No. 18 of 2015.

- (a) in subsection (1)—
  - (i) in paragraph (a) by inserting the word “of” immediately after the word “liquidation”;
  - (ii) in paragraph (b), by deleting the words “provisional supervisor” appearing in subparagraph (i) and substituting therefor the word “monitor”;

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

(fa) an administrative receiver of the company may not be appointed”;

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

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

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

Amendment of section 651 of No. 18 of 2015.

**35.** Section 653 of the Insolvency Act is amended—

Amendment of section 653 of No. 18 of 2015.

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

(b) in subsection (1), by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”.

**36.** Section 655 of the Insolvency Act is amended—

Amendment of section 655 of No. 18 of 2015

(a) in subsection (1), by deleting the words “provisional supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”; and

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

(b) the disposal is approved by the monitor.

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

Amendment of section 656 of No. 18 of 2015.

(b) the payment is approved by the monitor’

**38.** Section 657 of the Insolvency Act is amended—

Amendment of section 657 of No. 18 of 2015.

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

(b) in subsection (3), by deleting the words “to which this section applies” and substituting therefor the

words “in the possession of the company under a credit purchase transaction”

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

Amendment of the subheading of No. 18 of 2015.

**40.** Section 658 of the Insolvency Act is amended—

Amendment of section 658 of No. 18 of 2015.

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

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

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

(c) in subsection (2) —

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

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

(d) in subsection (3) —

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

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

(e) in subsection (4), by deleting the expression “subsection (1)(b)” and substituting therefor the expression “subsection (1)” ; and

(f) in subsection (5) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”.

**41.** Section 659 of the Insolvency Act is amended—

Amendment of section 659 of No. 18 of 2015.

(a) in the marginal note, by deleting the words

“provisional supervisor’s” and substituting therefor the word “monitor’s”;

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

(a) the monitor concludes that the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;

(c) in subsection (2), by deleting the expression “subsection (1)(a)(ii)” and substituting therefor the expression “subsection (1)(a)”;

(d) in subsection (3) by deleting the word “provisional supervisor’s” and substituting therefor the word “monitor”;

(e) in subsection (4) —

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

(ii) by deleting the word “supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”;

(f) by deleting subsection (5);

(g) in subsection (6), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(h) in subsection (7) —

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

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

**42.** Section 660 of the Insolvency Act is amended—

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

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

Amendment of  
section 660 of No.  
18 of 2015.



- (c) in subsection (3), by deleting the words “provisional supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”.

**43.** Section 661 of the Insolvency Act is amended—

Amendment to section 661 of No. 18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1) —
  - (i) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”;
  - (ii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”;
- (c) in subsection (3) —
  - (i) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”; and
  - (ii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”.

**44.** Section 662 of the Insolvency Act is amended—

Amendment to section 662 of No. 18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1) —
  - (i) by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (2)”;
  - (iii) by deleting the word “Division” appearing in paragraph (a) and substituting therefor the following new word “Part”;
  - (iv) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”;
  - (ii) by deleting the word “supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”; and

(iii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”;

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

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

**45.** The Insolvency Act is amended by deleting the subheading “Subdivision 5 – Consideration of proposal for and implementation of voluntary arrangement” appearing immediately after section 662.

Amendment of the subheading in No. 18 of 2015.

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

Repeal of section 663 of No. 18 of 2015.

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

Repeal of section 664 of No. 18 of 2015.

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

Repeal of section 665 of No. 18 of 2015.

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

Repeal of section 666 of No. 18 of 2015.

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

Repeal of section 667 of No. 18 of 2015.

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

Repeal of section 668 of No. 18 of 2015.

**52.** The Insolvency Act is amended by deleting the subheading “Subdivision 6” appearing immediately after section 668 and substituting therefor the sub heading “Division 5”.

Amendment of 668 in No. 18 of 2015.

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

Repeal and replacement of section 669 of No. 18 of 2015.

Extension of moratorium

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

**54.** Section 670 of the Insolvency Act is amended—

Amendment of section 670 of No. 18 of 2015.

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

**55.** Section 671 of the Insolvency Act is amended—

Amendment of section 671 of No. 18 of 2015.

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

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

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

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

Repeal of section 672 in No. 18 of 2015.

**57.** The Insolvency Act is amended by deleting the subheading “Subdivision 7” appearing immediately after section 672 and substituting therefor the subheading “Division 6”.

Amendment of subheading in No. 18 of 2015.

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

Repeal of section 673 of No. 18 of 2015.

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

Amendment of section 674 of No. 18 of 2015

- (a) in paragraph (a), by inserting the word “unfairly” immediately before the word “detrimental”; and
- (b) in paragraph (b), by inserting the word “unfairly” immediately before the word “detrimental”.

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

Amendment of  
section 34 of No.  
2 of 2016.

## **MEMORANDUM OF OBJECTS AND REASONS**

The Business Laws (Amendment) Bill (No.2), 2020 seeks to make various amendments to various statutes.

The Bill contains proposed amendments to the following statutes—

**Clause 1** of the Bill provides the short title and commencement of the Act.

**Clause 2** of the Bill seeks to amend the Law of Contract Act, Cap 23 to eliminate the requirement of a company seal in execution of documents for companies registered under the Companies Act, No. 17 of 2015.

**Clause 3** of the Bill proposes to amend the Industrial Training Act, Cap 237 to provide for the payment of the training levy to be remitted at the end of a business's financial year but not later than the ninth day of the month following end of the financial year.

**Clause 4** of the Bill proposes to amend the Stamp Duty Act, Cap 480, to exempt payment of fixed stamp duty of one hundred shillings on contracts for purposes of reducing the cost of doing business.

**Clause 5** of the Bill proposes to amend the National Hospital Insurance Fund Act, 1998 to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.

**Clauses 6 and 7** of the Bill proposes to amend the National Construction Authority Act, 2011 to provide for power of the Board to inquire into defects in a building to establish the causes of the defects in terms of structural defects and latent defects and the liability on the part of a registered person.

**Clauses 8 to 12** of the Bill proposes to amend the Land Registration Act, 2012 to eliminate the use of company seals in execution of documents by companies incorporated under the Companies Act, 2015, eliminate the requirement to submit Land Rent and Rate Clearance Certificate and Consent in other land transactions.

**Clause 13** of the Bill proposes to amend the National Social Security Fund Act, 2013 to provide for the contributions under the Act to be collected on the ninth day of the month for purposes of harmonizing payroll deductions through the Unified Payroll Return.

**Clauses 14 to 17** of the Bill seek to amend the Companies Act, 2015 (No. 17 of 2015) to eliminate the use of a company seal in operations of companies incorporated under the Companies Act. It also seeks to make

amendments to facilitate companies to hold meetings either through hybrid or virtual setting.

**Clauses 18 to 59** of the Bill propose to amend the Insolvency Act, 2015 to clarify that an administrator can distribute routine payment to unsecured creditors without courts permission. It also seeks to introduce a pre-insolvency moratorium period to prevent creditors from taking an enforcement action while a company considers its option for rescue.

**Clause 60** of the Bill proposes to amend the Small Claim Courts Act, 2016 to make provision to fast track procedure for small claims by providing a sixty-day timeline for adjudication of small claims.

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

The Bill does not limit fundamental rights and freedoms.

**Statement that the Bill does not concern county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

**Statement that 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 to be provided for through the annual estimates.

Dated the 9th December, 2020.

AMOS KIMUNYA,  
*Leader of Majority Party.*

*Section 3 of Cap 23 which it is proposed to amend—*

### **3. Certain contracts to be in writing**

(1) No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person unless the agreement upon which such suit is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

(2) No suit shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless such representation or assurance is made in writing, signed by the party to be charged therewith.

(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

(4) Subsection (3) shall not apply to a contract made in the course of a public auction nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust.

(5) The terms of a contract may be incorporated in a document either by being set out in it or by reference to some other document.

(6) For the purposes of subsection (3)—

“**advanced electronic signature**” has the same meaning as defined in the Kenya Information and Communications Act, 1998;

“**disposition**” includes a transfer and a devise, bequest or appointment of property contained in a will;

**“interest in land”** means any estate in or charge over land, or any estate in or charge over the proceeds of sale of land;

**“party”** includes any agent, auctioneer or advocate duly authorized in writing to act in the absence of the party who has given such authority;

**“sign”**, in relation to a contract, includes making one’s mark or writing one’s name or initial physically or by means of an advanced electronic signature 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;

**“transfer”** includes a mortgage, charge, lease, conveyance, assignment, assent, vesting declaration, vesting instrument disclaimer, release and every other assurance of property or any interest therein by any instrument other than a will or a codicil.

(7) The provisions of subsection (3) shall not apply to any agreement or contract made or entered into before the commencement of that subsection.

*Section 5B of Cap 237 which it is proposed to amend—*

### **5B. Training levies**

(1) The Minister may make a training levy order for the purpose of giving effect to proposals submitted by the Board and approved by him, and the order may provide for the amendment of a previous training levy order.

(2) A training levy order may contain provisions as to the evidence by which a person’s liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due and the manner in which it shall be recoverable by the Director-General.

(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 year thereafter that the amount due remains unpaid.



(4) A person who fails to comply with any provision of a training levy order shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings and if such failure continues after a conviction, such person shall be liable to a penalty not exceeding fifty thousand shillings for every year thereof during which such failure is continued.

(5) The court before which any person is convicted of an offence under subsection (4) may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any levy or any other sum due, together with any interest or penalty thereon, found to be due from such person to the Fund.

(6) Without prejudice to any other remedy, any training levy due under this Act plus the five percent penalty imposed by this section that remains unpaid shall be recoverable summarily by the Authority as a civil debt due to the Authority.

*Section 117 of Cap 480 which it is proposed to amend—*

### **117. Exemptions from stamp duty**

(1) There shall be exempt from stamp duty under this Act—

- (a) an instrument executed by or on behalf of or in favour of the Government in any case in which, but for this exemption, the Government would be liable to pay the duty;
- (b) a bill of exchange, cheque or promissory note drawn or made in Uganda or in Tanzania and accepted and paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in Kenya, if the bill of exchange, cheque or promissory note has previously been duly stamped in Uganda or Tanzania;
- (c) a power, warrant or letter of attorney granted or to be granted by the Managing Director of the Kenya Posts and Telecommunications Corporation, and a power, warrant or letter of attorney given by any depositor in the post office savings bank established under the provisions of the Kenya Post Office Savings Bank Act (Cap. 493B) (hereinafter referred to as the savings bank) to any other person, authorizing him to make a deposit of a sum of money in the savings bank on behalf of the depositor or to sign any document or instrument required by the rules of the savings bank to be signed on making the deposit or to receive back any sum of money deposited in the savings bank, or the interest arising therefrom; a receipt or an entry in a book of

receipts for money deposited in the savings bank, or for any money received by a depositor or his executors or administrators, assigns, attorneys or agents, from the funds thereof; and a draft or order, or an appointment of an agent, or any certificate or other instrument or document whatsoever, required or authorized to be given, issued, signed, made or produced in pursuance of that Act or of any rules made thereunder;

- (d) a transfer of shares in the stock or funds of the Government, the Organization, the Authority, the Government of Uganda or the Government of Tanzania;
- (e) a conveyance or transfer of any stock or marketable security in any company incorporated in Uganda or Tanzania, if the conveyance or transfer has been duly stamped in accordance with the law of the territory in which the company was incorporated;
- (f) an instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of a ship or of any part, interest, share or property of or in a ship;
- (g) a bond given by a public officer for the due execution of his duties;
- (h) a will, codicil or other testamentary disposition; and
  - (hh) instruments for the sale or transfer of land for the construction or expansion of educational institutions: Provided that stamp duty shall become payable if such land reverts to any other use.
- (i) the instruments generally or specially exempted in the schedule;
- (j) the exemption of all instruments with respect to licences of business activities of an export processing zone enterprise licenced under the Export Processing Zones Act (Cap. 517);
- (k) the sale conveyance, transfer or issue of shares, preferred shares, stocks, warrants or similar capital market instruments which are listed and transacted on the Nairobi Stock Exchange or other securities exchange approved under the Capital Markets Authority Act (Cap. 485A);
- (l) the purchase of a house by a first time home owner under affordable housing scheme;
- (m) an instrument under the Movable Property Security Rights Act, 2017;

- (n) an instrument executed for purposes of collection and recovery of tax;
- (o) an instrument relating to the business activities of special economic zone enterprises, developers and operators licenced under the Special Economic Zones Act, 2015;
- (p) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.

*Section 15 of No. 9 of 1998 which it is proposed to amend—*

### **15. Contributions to the Fund**

- (1) Subject to this Act, any person—
  - (a) who is ordinarily resident in Kenya; and
  - (b) who has attained the age of 18 years; and
  - (c) whose total income, whether derived from salaried or self-employment, in the immediately preceding month, was not less than such amount as the Board, in consultation with the Minister, may prescribe, shall be liable as a contributor to the Fund.
- (2) A person liable as a contributor under this section shall pay to the Board—
  - (a) in the case of a person whose income is derived from salaried employment, a standard contribution; or
  - (b) in the case of a person whose income is derived from self-employment, a special contribution, in accordance with this section.
- (3) A contribution under subsection (2) shall be at such rate, depending on the person's total income, as the Board, in consultation with the Minister, may determine.
- (4) A person to whom this section applies shall pay the contribution to the Board on the first day of each month or on such later date as the Board, in consultation with the Minister, may prescribe.
- (5) In this section, “**income**” means such income as the Board, in consultation with the Minister and the Minister for Finance may prescribe for the purposes of this Act.

*Section 2 of No. 41 of 2011 which it is proposed to amend—*

### **Interpretation**

In this Act, unless the context otherwise requires—

**“Authority”** means the National Construction Authority established under section 3;

**“Board”** means the Board of the Authority established under section 7;

**“chairperson”** means the chairperson of the Board appointed under Section 7(1);

**“class”** in relation to contract, means any of the classes of contract works set out in the Third Schedule in respect of which a contractor may be licensed by the Board;

**“company”** means a company within the meaning of the Companies Act (Cap. 486);

**“construction industry”** means the industry concerning construction works;

**“construction site supervisor”** means a person assigned to the construction site by a contractor to supervise construction works;

**“construction works”** means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of—

- (a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;
- (b) any road, harbour works, railway, cableway, canal or aerodrome;
- (c) any drainage, irrigation or river control works;
- (d) any electrical, mechanical, water, gas, petrochemical or telecommunication works; or
- (e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works, and includes any works’ which form an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping;

**“contractor”** means a person registered under section 15;

**“executive director”** means the executive director of the Authority appointed under section 12;

“**member**” in relation to the Board or the Appeals Authority includes the chairman and the vice-chairman;

“**Minister**” means the Minister for the time being responsible for matters relating to public works;

“**person**” includes a firm or body of persons, whether corporate or unincorporate;

“**register**” means the Register of Contractors maintained by the Authority in accordance with the provisions of this Act;

“**registered**” in relation to any contractor means a contractor whose name is entered in the relevant register;

“**Registrar**” means the executive director.

*Section 22 of No. 41 of 2011 which it is proposed to amend—*

## **22. Inquiry into conduct of contractors**

(1) The Board may institute an inquiry into the conduct of a contractor on its own initiative or upon receipt of a complaint addressed to the Board in writing, made by or on behalf of any person alleging unprofessional conduct on the part of a registered person.

(2) The Board may conduct such inquiry or refer it to a subcommittee appointed by the Board for the purpose.

(3) Upon receipt of a complaint against a contractor, the Board shall inform the person complained of, giving the grounds of the complaint, by notice sent to the contractor’s last address acknowledged by the Registrar.

(4) The Board may call upon the contractor whose conduct is complained of or is under investigation to file, within a specified period, an explanation in answer to the complaint, and may require such explanation to be verified by affidavit.

(5) The Board may summon before it or before a subcommittee established for the purpose, any contractor against whom a complaint is lodged or whose conduct may appear to the Board to require investigation, and may call upon such contractor to produce any document, contract, book, paper, specification, quantities or other writing in that contractor’s control in any way relating to or concerning the complaint or matter under investigation, and may hear any evidence and inspect any document which the complaint or the party complained against may desire to adduce.

(6) The contractor against whom a complaint is made shall have the right to appear before the Board and to be heard either personally or

through his advocate, and may call such evidence and produce such documents as may be relevant.

(7) Any contractor who, having been served with a summons or an order issued under the provisions of subsection (5), fails without sufficient cause—

- (a) to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Board; or
- (b) to produce any documents in his possession or under his control which are specified in the order, commits an offence and is liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

(8) Any person giving evidence before the Board shall in respect of any evidence given by him or any document produced by him, be entitled to all privileges to which he would be entitled as a witness before the High Court.

(9) The Board, having inquired into the alleged misconduct of any contractor, may—

- (a) caution the contractor;
- (b) direct the contractor to take such action as it may deem appropriate in the circumstances;
- (c) direct that the registration of the contractor be suspended for such period as it may specify; or
- (d) direct that the name of the contractor be removed from the register.

*Section 54 of No. 3 of 2012 which it is proposed to amend—*

#### **54. Registration of Leases**

(1) Upon the registration of a lease containing an agreement, express or implied, by the lessee that the lessee shall not transfer, sub-let, charge or part with possession of any of the leased land without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with this Act has been produced to the Registrar.

(2) The Registrar, upon receipt of adequate proof, may dispense with the consent of the lessor—

- (a) where satisfactory evidence is given to the registrar and the Registrar is satisfied that the lessor is dead and that there is no personal representative of the lessor;
- (b) if the Registrar considers that the consent of the lessor or the personal representative, as the case may be, cannot be obtained or that it can only be obtained with difficulty or at an unreasonable expense and shall, after making such enquiries as the Registrar may consider necessary in the circumstances, record on the document his or her reasons for dispensing with the consent and note as such in the register; or
- (c) on any of the grounds set out under section 39(4).

(3) The registration of interests in land under the law relating to sectional properties shall be carried out in the manner prescribed under that Act.

(4) The land register maintained under section 7 of this Act shall be deemed to be the land register for purposes of the Sectional Properties Act, 1987 (No. 21 of 1987).

(5) The Registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.

(6) The Cabinet Secretary may prescribe regulations for the registration of long term-leases.

*Section 55 of No. 3 of 2012 which it is proposed to amend—*

### **55. Lessor's consent to dealing with leases**

If a lease contains a condition, express or implied, by the lessor that the lessor shall not transfer, sub-let, charge or charge or part with the possession of the land leased or any part of it without the written consent of the lessor, and the dealings with the lease shall not be registered unless—

- (a) the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar and the Registrar shall not register any instrument purporting to transfer or create any interest in that land; and
- (b) a land rent clearance certificate and the consent to the lease, certifying that no rent is owing to the Commission in respect of

the land, or that the land is freehold, has been produced to the Registrar.

*Section 56 of No. 3 of 2012 which it is proposed to amend—*

### **56. Form and effect of charges**

(1) A proprietor may by an instrument, in the prescribed form, charge any land or lease to secure the payment of an existing, future or a contingent debt, other money or money's worth, or the fulfillment of a condition and, unless the chargee's remedies have been by instrument, expressly excluded, the instrument shall, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and if no such date is specified or repayment is not demanded by the charge on the date specified, the money shall be deemed to be repayable three months after the service of a demand, a written, by the chargee.

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

(5) A charge shall have effect as a security only and shall not operate as a transfer.

(5A) No certificate shall be required under subsection (4) if the charge relates to—

- (a) a unit in a condominium;
- (b) an office in a building; or
- (c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.

(6) There shall be included, in an instrument of charge, securing the fulfillment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to application of purchase money by the charge, of the money which may arise on the exercise of the



chargee's power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make the future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

*Section 64 of No. 3 of 2012 which it is proposed to amend—*

#### **64. Liquidation**

(1) If a company is being wound up, the liquidator shall—

- (a) produce to the Registrar any resolution or order appointing the liquidator; and
- (b) satisfy the Registrar that the person has complied with the Companies Act (Cap. 486), and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation that has been presented for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, and be signed by the liquidator whose signature shall be verified in accordance with section 45.

(3) Where a vesting order has been made under the Companies Act, the liquidator shall present the order to the Registrar who shall register the liquidator as proprietor of any land, lease or charge to which the order relates.

*Section 20 of No. 45 of 2013 which it is proposed to amend—*

#### **20. Mandatory Contributions to the Fund**

(1) From the commencement date and subject to the provisions of sub-section (3) and section 21, an employer shall pay to the Pension Fund in respect of each employee in his or her employment—

- (a) the employer's contribution at six *per centum* of the employee's monthly pensionable earnings; and
- (b) the employee's contribution at six *per centum* of the employee's pensionable earnings deducted from the employee's earnings.

(2) Notwithstanding the provisions of subsection (1), the contributions in the first five years shall be deducted in accordance with the Third Schedule.

(3) Tier I contributions shall be credited to the employee's Tier I Fund Credit and, subject to the provisions of section 21, Tier II contributions shall be credited to the employee's Tier II Fund Credit.

*Section 3 of No. 17 of 2015 which it is proposed to amend—*

### **3. Interpretation of provisions of this Act**

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

**“address”** includes—

- (a) a fax number, e-mail address or any other electronic address used for the purposes of sending or receiving documents or information by electronic means; and
- (b) a postal and physical address;

**“administrator”**, in relation to a company, means an administrator appointed under the laws relating to insolvency;

**“allotted share capital”**, in relation to a company, means shares of the company that have been allotted;

**“approved securities exchange”** means a securities exchange approved by the Capital Markets Authority in accordance with the Capital Markets Act (Cap. 485A);

**“articles”** means the articles of association of a company;

**“associate”**—

(a) in relation to a natural person means—

- (i) that person's spouse or child;
- (ii) a body corporate of which that person is a director; and
- (iii) an employee or partner of that person;

(b) in relation to a body corporate means—

- (i) a body corporate of which that body corporate is a director;
- (ii) a body corporate in the same group as that body; and
- (iii) an employee or partner of that body corporate or of a body corporate in the same group;

(c) in relation to a partnership that is not a legal person under the law by which it is governed, means any person who is an associate of any of the partners;

**“associated company”** means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

**“auditor”** means—

- (a) a person or firm appointed as an auditor of a company under Part XXVII; or
- (b) a person or firm appointed as an auditor of a body of a kind prescribed by the regulations for the purposes of this definition;

**“authorised signatory”** in relation to a company, means a director of the company and also means—

- (a) in the case of a public company, the secretary or a joint secretary of the company; and
- (b) in the case of a private company that has a secretary, the secretary;

**“Attorney-General”** means the Attorney-General appointed under Article 156 the Constitution;

**“beneficial owner”** means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

**“body corporate”** includes a firm that is a legal person under the law by which it is governed;

**“Cabinet Secretary”** *deleted by Act No. 28 of 2017, s. 2(b);*

**“called-up share capital”** means so much of a company's share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with—

- (a) any share capital paid up without being called; and
- (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares;

**“company”** means a company formed and registered under this Act or an existing company;

**“company limited by guarantee”** has the meaning given by section 7;

**“company records”** (or **“records of a company”**) means—

- (a) any register, index, accounting records, agreement, morandum, minutes or other document required by or under this Act to be kept by the company; or
- (b) any register kept by the company of its debenture holders;

**“the Court”** means (unless some other court is specified) the High Court;

**“credit sale agreement”** means an agreement for the sale of goods under which payment of the whole or a part of the purchase price is deferred and a security right in the goods is created or provided for in order to secure the payment of the whole or a part of the purchase price;

**“debenture”**, in relation to a company, includes debenture stock, bonds and any other securities of a company (whether or not constituting a charge on the assets of the company);

**“deed”** means a legal document that grants a right by transferring the right from one person to another;

**“direction”** means direction in writing;

**“director”**, in relation to a body corporate, includes—

- (a) any person occupying the position of a director of the body (by whatever name the person is called); and
- (b) any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act;

**“document”** means information recorded in any form; and in particular includes a summons, notice, order or other legal process and a register (whether in hard copy or electronic form);

**“dormant company”** means a company that is dormant during any period in which it has no significant accounting transaction;

**“electronic address”** means an address used for the purposes of sending or receiving documents or information by electronic means;

**“electronic copy”** in relation to a document or information, means a copy of the document or information that is stored or kept in electronic form;

**“electronic form”** in relation to a document or information, means the storage or keeping of the document or information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both;

**“electronic means”**, in relation to a document or information, means— (a) sending, supplying or delivering the document or information initially, and receiving it at its destination, by means of electronic equipment for the processing (including by digital compression) or storage of data; and being entirely transmitted, conveyed and received by wire, radio, optical means or by other electromagnetic means;

**“electronic money”** means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer that—

- (a) is issued on receipt of funds for the purpose of making payment transactions;
- (b) is accepted by a person other than the electronic money issuer; and
- (c) is not excluded by the regulations;

**“electronic money issuer”** means a person authorised by the regulations to issue electronic money;

**“eligible member”**, in relation a resolution of a company, means a member who, under the articles of the company, is entitled to vote on the resolution;

**“employees’ share scheme”** means a scheme for encouraging or facilitating the holding of shares in, or debentures of, a company by or for the benefit of—

- (a) the bona fide employees or former employees of—
  - (i) the company;
  - (ii) a subsidiary of the company;
  - (iii) the company's holding company or a subsidiary of the company's holding company; or
- (b) the spouses, surviving spouses, or minor children or step-children of those employees or former employees;

**“equity share capital”** means a company's issued share capital excluding any part of that capital that does not confer any right, either with respect to dividends or to capital, to participate beyond a specified amount in a distribution;

**“equity securities”** means—

- (a) ordinary shares in a company; or
- (b) rights to subscribe for, or to convert securities into ordinary shares in the company;

**“excluded from consolidation”**, in relation to a group financial statement, means that the undertaking concerned is not included or liable to be included in that statement;

**“expenses”** includes costs; and **“expenses”** (of an investigation) includes expenses incidental to the investigation;

**“expression”** includes sign, symbol, logo and mark;

**“existing company”** means—

- (a) a company formed and registered under the repealed Act; or
- (b) a company that was formed and registered under either of the repealed Ordinances (as defined by that Act);

**“firm”** means an entity, whether or not a legal person, that is not a natural person; and includes a body corporate, sole proprietorship, partnership or other unincorporated association;

**“Foreign Companies Register”** means the register kept under section 994;

**“foreign company”** means a company incorporated outside Kenya;

**“foreign companies regulations”** means regulations made under section 995 and in force;

**“former name”** means a name by which a natural person was formerly known for business purposes;

**“general meeting”**, in relation to a company, means a general meeting of the company;

**“group”**, in relation to a body corporate, means the body corporate, any other body corporate that is its holding company or subsidiary and any other body corporate that is a subsidiary of that holding company;

**“group undertaking”**, in relation to an individual undertaking, means an undertaking that is—

- (a) a parent undertaking or subsidiary undertaking of the individual undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of the individual undertaking;

**“hard copy form”** means a document or information that is sent, supplied or delivered in a paper copy or similar form capable of being read and references to hard copy have a corresponding meaning;

**“hire-purchase agreement”** means a hire-purchase agreement as defined in section 2(1) of the Hire Purchase Act (Cap. 507);

**“holding company”** in relation to another company, means a company that—

- (a) controls the composition of that other company's board of directors;
- (b) controls more than half of the voting rights in that other company;
- (c) holds more than half of that other company's issued share capital; or
- (d) is a holding company of a company that is that other company's holding company;

**“in default”**, in relation to an officer of a company, has the meaning given by section 996;

**“in liquidation”** has the same meaning as the meaning provided under the laws relating to insolvency;

**“intellectual property”** means—

- (a) any patent, trade mark, registered design, copyright or design right; or
- (b) any licence under or in respect of a patent, trade mark, registered design, copyright or design right;

**“issued share capital”**, in relation to a company, means shares of the company that have been issued;

**“key performance indicators”**, in relation to a company, means factors by reference to which the development, performance or position of the company's business can be measured effectively;

**“liabilities”** includes duties;

**“limited company”** has the meaning given by section 5;

**“lodge”**, in relation to a document or information required or permitted to be registered, includes deliver, file, send, submit the document or information or, in the case of a notice, give the notice;

**“member”** means a member of a company;

**“name”**, in relation to a natural person, means the person's given name and family name, or if the person is usually known by a title, the person's title, either in addition to or instead of the person's given name or family name, or both;

**“notice”** means notice in writing;

**“notify”** means notify in writing;

**“net assets”**, in relation to a company, means the aggregate of the assets less the aggregate of its liabilities, and for the purpose of this definition, "liabilities" includes provisions of any kind;

**“officer”**, in relation to a company or other body corporate, means—

- (a) any director, manager or secretary of the company or body; and
- (b) any other person who is, because of a provision of this Act, to be treated as an officer of the company or body for the purposes of the provision;

**“ordinary shares”** means shares other than shares that, with respect to dividends and capital, confer a right to participate only up to a specified amount in a distribution;

**“parent undertaking”** (of another undertaking) means an undertaking that—

- (a) holds a majority of the voting rights in the other undertaking;
- (b) is a member of the other undertaking and has the right to appoint or remove a majority of its board of directors;
- (c) has the right to exercise a dominant influence over the other undertaking—
  - (i) because of provisions contained in the other undertaking's articles; or
  - (ii) because of a control contract;
- (d) has the power to exercise, or actually exercises, dominant influence or control over the other undertaking; or
- (e) is a member of the other undertaking and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it;

**“pension scheme”** means a scheme for the provision of benefits consisting of or including a pension, lump sum benefit, gratuity or other similar benefit given or to be given on the retirement or death, or in anticipation of the retirement of employees or former employees or, in



connection with the past service of employees or former employees, either after their retirement or death;

**“personal injury”** includes any disease and any impairment of a person's

physical or mental condition;

**“printed”** includes typewritten or lithographed or produced by any mechanical means;

**“private company”** has the meaning given by section 9;

**“prescribed financial accounting standards”** means statements of standard accounting practice issued by the Institute of Certified Public Accountants of Kenya in accordance with the Accountants Act (No. 15 of 2008);

**“profit and loss account”** includes an income statement or other equivalent financial statement required to be prepared in accordance with the prescribed financial accounting standards;

**“property”** includes all rights and interests in property;

**“public company”** has the meaning given by section 10;

**“publish”**, in relation to a document or information, means to issue or circulate the document or information or otherwise make it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it;

**“qualified”**, in relation to an auditor's report (or a statement contained in an auditor's report) on a company's financial statement, means that the report or statement does not state the auditor's unqualified opinion that the financial statement has been properly prepared—

- (a) in accordance with this Act; or
- (b) if an undertaking not required to prepare financial statements in accordance with this Act—in accordance with any corresponding written law under which the undertaking is, or its directors are, required to prepare financial statements or accounts;

**“qualifying person”** in relation to a meeting of a company means—

- (a) a natural person who is a member of the company;
- (b) a person authorised under section 297 to act as the representative of a corporation in relation to the meeting; or
- (c) a person appointed as proxy of a member of the company in relation to the meeting;

**“quoted company”** means a company whose equity share capital has been included in the official list on a stock exchange or other regulated market in Kenya;

**“register”** (when used as a verb) means register under this Act;

**“Register”** means the Register of Companies kept under this Act, but does

not include the Foreign Companies Register;

**“registered foreign company”** means a foreign company registered, or taken to be registered, in accordance with Part XXXVII;

**“the Registrar”** means the person for the time being holding office as Registrar of Companies under section 831;

**“the regulations”** means the companies general regulations made and in force under this Act, but does not, unless expressly provided, include the foreign companies regulations or savings and transitional regulations;

**“the repealed Act”** means the Companies Act (Cap. 486) repealed by this Act;

**“resolution for reducing share capital”**, in relation to a company that has a share capital, means a special resolution passed by the company in accordance with section 407;

**“retention of title agreement”** means an agreement for the sale of goods to a company, being an agreement—

- (a) that does not constitute a charge on the goods; but
- (b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company with respect to the goods or any property representing the goods as long as it has satisfied the applicable requirements for third-party effectiveness under the law relating to movable property security rights.

**“securities”** includes—

- (a) options;
- (b) futures; and
- (c) contracts for differences, and rights or interests in those investments;

**“service address”**, in relation to a person, means an address at which documents may be effectively served on that person for the purposes of this Act;

**“services”** means anything other than goods or land; **“shares”** —

- (a) in relation to an undertaking with a share capital, means shares in the share capital of the undertaking;
- (b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking; and
- (c) in relation to an undertaking without capital, means interests —
  - (i) conferring a right to share in the profits, or the liability to contribute to the losses, of the undertaking; or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a liquidation;

**“sign”** includes sign by means of an electronic signature;

**“significant accounting transaction”**, in relation to a dormant company, means a transaction that is required by section 638 to be entered in the company's accounting records;

**“subsidiary”** means a company of which another company is its holding company;

**“subsidiary undertaking”** (of another undertaking) means an undertaking of which the other undertaking is its parent;

**“traded company”**, means a company whose securities are admitted to trading on a securities exchange or other regulated market operating in Kenya;

**“turnover”**, in relation to a company, means the amounts derived from the provision of goods or services, or goods and services, in the course of the company ordinary business, after deducting—

- (a) trade discounts;
- (b) value added tax; and
- (c) any other taxes based on the amounts so derived;

**“uncalled share capital”**, in relation to a company, means so much means so much of the company's share capital as is not called-up share capital of the company;

**“under administration”** has the same meaning as provided for in the laws related to insolvency;

**“undertaking”** means—

- (a) a body corporate or partnership; or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit;

**“undistributable reserves”** (of a company) means those reserves of the company that comprise—

- (a) its share premium account;
- (b) its capital redemption reserve;
- (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and
- (d) any other reserve that the company is prohibited from distributing by its articles;

**“unlimited company”** has the meaning given by section 8;

**“wholly-owned subsidiary company”** (of another company) means a company that has no members other than that other company and that other company's wholly owned subsidiaries (or persons acting on behalf of that other company or its wholly-owned subsidiaries);

**“working day”** means any day between Monday and Friday, but does not include a public holiday.

(2) In this Act, a reference to a company having a share capital is to a company that has power under its constitution to issue shares.

(3) In this Act, a reference to issued or allotted shares, or to issued or allotted share capital, includes shares taken on the formation of the company by the subscribers to the company's memorandum.

(4) For the purposes of this Act, shares in a company are allotted when a person acquires the unconditional right to be included in the company's register of members in respect of the shares.

(5) In the case of an undertaking not trading for profit, a reference in this Act to a profit and loss account is a reference to an income and expenditure account, and a reference—

- (a) to profit and loss; and
- (b) in relation to a group financial statement—to a consolidated profit and loss account, is to be construed accordingly.

(6) The reference in paragraph (c) of the definition of “**undistributable reserves**” in subsection (1) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

(7) In a provision of this Act in which a reference to the laws relating to insolvency occurs, the reference includes, so far as relevant to a matter existing before the commencement of the provision, a reference to the corresponding provision (if any) of the repealed Act.

(8) The regulations may, for the purposes of this Act, explain and circumscribe the definitions of “**parent undertaking**” and “**subsidiary undertaking**” in subsection (1) and otherwise supplement those definitions.

*Section 283 of No. 17 of 2015 which it is proposed to amend—*

**283. Publication of notice of general meeting on company’s website**

(1) Notice of a general meeting that is given by a company by means of a website is not effective unless it complies with this section.

(2) In notifying its members of the presence on a website of a notice convening a general meeting, a company shall—

- (a) state that it concerns a notice of a company meeting;
- (b) specify the place, date and time of the meeting; and
- (c) in the case of a public company, state whether the meeting will be an annual general meeting.

(3) The company shall ensure that the notice of the general meeting is available on the website throughout the period from and including the date of that notification and ending with the conclusion of the meeting.

*Section 285 of No. 17 of 2015 which it is proposed to amend—*

**285. Contents of notices of general meetings**

(1) In giving notice of a general meeting, a company shall specify—

- (a) the time and date of the meeting;
- (b) the place of the meeting; and
- (c) the general nature of the business to be dealt with at the meeting.

*Paragraph 5 of the Sixth Schedule of No. 17 of 2015 which it is proposed to amend—*

**11. Official seal of existing company**

If an existing company had an official seal immediately before the repeal of section 37 of the DDC, the seal continues to have effect as if it had been created by the company under section 42 of this Act.

*Section 34 of No. 2 of 2016 which it is proposed to amend—*

### **34. Expeditious disposal of cases**

(1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination.

(2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.

(3) The Court may only adjourn the hearing of any matter under exceptional circumstances which shall be recorded.

*Section 474 of No. 18 of 2015 which it is proposed to amend—*

### **474. Share of assets to be made available for unsecured creditors where floating charge relates to company's property**

(1) This section applies to a company in respect of which a floating charge relates to its property—

- (a) if the company is in liquidation or under administration; or
- (b) if a provisional liquidator is appointed in respect of it.

(2) If this section applies to a company, the liquidator, administrator or provisional liquidator—

- (a) shall make available for the satisfaction of unsecured debts such portion of the company's net assets as is prescribed by the insolvency regulations for the purposes of this subsection; and
  - (b) may not distribute that part to the proprietor of a floating charge except to the extent that it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) does not apply to a company if—
- (a) the company's net assets are less than the minimum prescribed by the insolvency regulations for the purposes of this subsection; and
  - (b) the liquidator, administrator or provisional liquidator believes that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(4) Subsection (2) also does not apply to a company if, or in so far as, it is disapplied by—

- (a) a voluntary arrangement in respect of the company in accordance with Part IX; or
- (b) a compromise or arrangement agreed under the Companies Act, 2015.

(5) Subsection (2) also does not apply to a company if—

- (a) the liquidator, administrator or provisional liquidator applies to the Court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (b) as a result of such an application, the Court orders that subsection (2) is not to apply.

(6) In subsections (2) and (3) a company's net assets is the amount of its assets that would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) The regulations referred to in subsection (2) prescribing part of a company's net assets may, in particular, provide for its calculation—

- (a) as a percentage of the company's net assets; or
- (b) as an aggregate of different percentages of different parts of the company's net assets.

(8) In this section, "floating charge" means a charge that is a floating charge on its creation and that is created after the regulations referred to in subsection (2)(a) take effect.

*Division 2 of No. 18 of 2015 which it is proposed to amend—*

## **Division 2 — Moratoria on debt payments when company's directors propose voluntary arrangement**

### *Subdivision 1 — Introductory provisions*

*Section 636 of No. 18 of 2015 which it is proposed to amend—*

#### **636. Interpretation: Division 2**

(1) In this Division—

"**agreement**" includes an agreement or undertaking effected by contract, deed or any other document intended to have effect in accordance with the law of Kenya or another jurisdiction;

**“beginning of the moratorium”** has the meaning given by section 645(1);

**“lodgement date”** means the date on which the documents and statements referred to in section 644(1) are lodged with the Court;

**“proposal”** means a proposal for a voluntary arrangement;

**“moratorium”** means a moratorium that has taken effect under section 645 and has not ended;

**“moratorium committee”** means a committee established under section 672;

**“person”** includes partnership and any other unincorporated group of persons.

(2) For the purposes of this Division, a voluntary arrangement the approval of which has taken effect under section 673 ends prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement because of section 666 (2) (b) (ii).

*Section 637 of No. 18 of 2015 which it is proposed to amend—*

### **637. Application of Division 2**

This Division has effect with respect to—

- (a) companies eligible for a moratorium;
- (b) the procedure for obtaining such a moratorium;
- (c) the effects of such a moratorium; and
- (d) the procedure applicable (instead of Division 1) in relation to the approval and implementation of a voluntary arrangement when such a moratorium is or has been in force.

*Section 638 of No. 18 of 2015 which it is proposed to amend—*

### **638. Eligible companies**

A company is eligible to obtain a moratorium if it—

- (a) complies with such requirements (if any) as may be prescribed by the insolvency regulations; and
- (b) is not declared to be an ineligible company by another provision of this Subdivision.



*Section 640 of No. 18 of 2015 which it is proposed to amend—*

**640. Companies under administration, etc. ineligible to obtain moratorium**

(1) The following companies are also ineligible companies for the purpose of section 638—

- (a) a company that is under administration;
- (b) a company that is in liquidation;
- (c) a company in respect of which a voluntary arrangement already has effect;
- (d) a company in respect of which a provisional liquidator is appointed;
- (e) a company in respect of which a moratorium has had effect at any time during the twelve months ending with the lodgement date and—
  - (i) a voluntary arrangement was not in effect when the moratorium ended; or
  - (ii) a voluntary arrangement that had effect during that period ended prematurely;
- (f) a company in respect of which an administrator appointed under section 541 held office during the twelve months immediately preceding the lodgement date;
- (g) a company in respect of which a voluntary arrangement had been in effect ended prematurely and, during the twelve months immediately preceding the lodgement date, an order under section 630 (7) (a) has been made;
- (h) a company in respect of which an administrative receiver is appointed under the repealed Companies Act.

(2) Subsection (1) (b) does not apply to a company that, because of a liquidation order made after the lodgment date, is treated as in liquidation on that date.

*Section 642 of No. 18 of 2015 which it is proposed to amend—*

**642. Companies with large outstanding liabilities ineligible**

(1) A company is also an ineligible company for the purposes of section 638 if, on the lodgement date, it has a liability outstanding under an agreement of one billion shillings or more.

(2) If the liability in subsection (1) is a contingent liability under or because of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the

liability in relation to which the guarantee, indemnity or security is provided.

(3) In this section, a reference to a liability includes—

- (a) a present or future liability whether, in either case, it is certain or contingent; and
- (b) a reference to a liability to be paid wholly or partly in foreign currency (in which case the equivalent in Kenya shillings is to be calculated as at the time when the liability is incurred).

*Subdivision 2 – obtaining a moratorium*

*Sections 643 of No. 18 of 2015 which it is proposed to amend—*

**643. What steps company's directors have to take to obtain a moratorium**

(1) If the directors of an eligible company wish to make a proposal for a voluntary arrangement, they shall take the required steps to obtain a moratorium for the company.

(2) If the directors of an eligible company wish to obtain a moratorium, they shall—

(a) prepare—

- (i) a document setting out the terms of the proposal; and
- (ii) a statement of the company's financial position containing such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed by the insolvency regulations for the purposes of this section, and such other information as may be so prescribed; and

(b) unless a provisional supervisor has already been appointed in respect of the proposal—appoint as its provisional supervisor an authorised insolvency practitioner who has consented to supervise it.

(3) After preparing the proposal and statement and, if appropriate, making the appointment, the directors shall submit the proposal and statement to the provisional supervisor for consideration and comment.

(4) If the provisional supervisor requires them to do so, the directors shall provide such other information necessary to enable that supervisor to comply with subsection (5).

(5) The provisional supervisor shall submit to the directors a statement indicating whether or not, in that supervisor's opinion—

- (a) the proposal has a reasonable prospect of being approved and implemented;
- (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and
- (c) meetings of the company and its creditors should be convened with a view to considering and approving the proposal.

(6) In forming an opinion on the matters referred to in subsection (5), the provisional supervisor is entitled to rely on the information contained in the document and statement submitted under subsection (2), and provided in accordance with subsection (4), unless that supervisor has reason to doubt its accuracy.

(7) The reference in subsection (5)(b) to the company's business is to that business as the company proposes to carry it on during the proposed moratorium.

*Section 644 of No. 18 of 2015 which it is proposed to amend—*

**644. What directors have to do to obtain moratorium**

(1) To obtain a moratorium, the directors of a company shall lodge with the Court—

- (a) the proposal and statement referred to in section 643(2)(a);
- (b) a statement to the effect that the company is eligible for a moratorium and the basis of that eligibility;
- (c) a statement from the provisional supervisor that that supervisor has consented to act as supervisor of the proposed arrangement if approved;
- (d) a statement from the provisional supervisor that, in that supervisor's opinion—
  - (i) the proposal has a reasonable prospect of being approved and implemented;
  - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business; and
  - (iii) meetings of the company and its creditors should be convened to consider the proposal; and

(e) a statement providing such other information (if any) with respect to the company's financial position as is specified in the insolvency regulations for the purposes of this section.

(2) The reference in subsection (1) (d) (ii) to the company's business is to the business as proposed to be carried on by the company during the proposed moratorium.

*Section 645 of No. 18 of 2015 which it is proposed to amend—*

#### **645. Duration of moratorium**

(1) A moratorium takes effect when the documents specified in section 644(1) are lodged with the Court.

(2) A moratorium ends—

(a) at the end of the day on which the meetings held in accordance with section 664 are first held; or

(b) if the meetings are held on different days—at the end of the later of those days, unless the moratorium period is extended in accordance with section 669.

(3) If either of those meetings has not first been held within thirty days from and including the day on which the moratorium takes effect, the moratorium ends—

(a) at the end of the day on which those meetings were to be held; or

(b) if those meetings were convened to be held on different days—the later of those days, unless the moratorium period is extended under section 669.

(4) If the provisional supervisor fails to convene either meeting within the required period, the moratorium ends at the end of the last day of that period.

(5) A moratorium that is extended or further extended under section 669 ends at the end of the day to which it is extended or further extended.

(6) Subsections (2) to (5) do not apply if the moratorium ends before the relevant time because of—

(a) section 659(4);

(b) an order under section 660(3), 661(3) or 674; or

(c) a decision of one or both of the meetings held in accordance with section 664.

(7) A moratorium that has not ended as provided by subsections (2) to (6) ends at the end of the day on which a decision under section 664 to approve a voluntary arrangement takes effect under section 666.

(8) The insolvency regulations may increase or reduce the period specified in subsection (3).

*Section 646 of No. 18 of 2015 which it is proposed to amend—*

#### **646. What happens when moratorium takes effect**

(1) When a moratorium takes effect in respect of a company, the directors of the company shall immediately give notice of that fact to the provisional supervisor.

(2) If subsection (1) is not complied with, each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), the directors continue to fail to give the required notice to the provisional supervisor, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

*Section 647 of No. 18 of 2015 which it is proposed to amend—*

#### **647. Duty of provisional supervisor to publish and give notice that moratorium has taken effect**

(1) As soon as practicable after being notified that a moratorium has taken effect, the provisional supervisor shall—

(a) publish—

(i) once in the Gazette;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any) a notice to the effect that the moratorium has taken effect;

(b) give to any creditor of the company of whose claim that supervisor is aware a notice that it has taken effect; and

(c) lodge a copy of the notice with the Registrar for registration.

(2) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (1) commits an offence and on

conviction is liable to a fine not exceeding two hundred thousand shillings.(3) If, after being convicted of an offence under subsection (2), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

*Section 648 of No. 18 of 2015 which it is proposed to amend—*

**648. Notification of end of moratorium to be given by provisional supervisor**

(1) Within fourteen days after a moratorium has come to an end, the provisional supervisor shall—

(a) publish—

(i) once in the Gazette;

(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and

(iii) on the company's website (if any) a notice to the effect that the moratorium has ended;

(b) give to any creditor of the company of whose claim that supervisor is aware a notice to the effect that the moratorium has ended; and

(c) lodge a copy of the notice with the Registrar for registration.

(2) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) If, after being convicted of an offence under subsection (2), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

*Subdivision 3 — Effects of moratorium*

*Section 649 of No. 18 of 2015 which it is proposed to amend—*

**649. Effect of moratorium on creditors and others**

(1) While a moratorium has effect in respect of a company—

(a) an application for liquidation the company may not be made;

- (b) a meeting of the company may be convened or requisitioned—
  - (i) only with the consent of the provisional supervisor or with the approval of the Court; and
  - (ii) if the Court gives approval—subject to such conditions as the Court may impose;
- (c) a resolution for the liquidation of the company has no effect;
- (d) the Court may not make an order for the liquidation of the company;
- (e) an application for an administrator to be appointed in respect of the company may not be made and if made is of no effect;
- (f) an administrator of the company may not be appointed under section 534 or 541;
- (g) a landlord or other person to whom rent is payable may exercise a right of forfeiture in relation to premises let to the company in respect of a failure by the company to comply with any term of its tenancy of the premises—
  - (i) only with the approval of the Court; and
  - (ii) if the Court gives approval—subject to such conditions as the Court may impose;
- (h) steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under a credit purchase transaction—
  - (i) only with the approval of the Court; and
  - (ii) if the Court gives approval—subject to such conditions as the Court may impose; and
  - (iii) other proceedings (including execution or other legal process) may be commenced or continued, and distress may be levied, against the company or its property—
  - (iv) only with the approval of the Court; and
  - (v) if the Court gives approval—subject to such conditions as the Court may impose.

(2) If an application (other than an excepted application), for the liquidation of the company has been made before the beginning of the moratorium, section 429 does not apply in relation to a disposition of property, transfer of shares or alteration in status made during the moratorium or at a time referred to in section 666(5)(a).

(3) Subsection (1)(a) does not apply to an excepted application and, if such an application has been made before the beginning of the moratorium or is made during the moratorium, subsections (1)(b) and (c) do not apply to or with respect to the hearing of the application.

(4) For the purposes of this section, “excepted application” means an application under—

- (a) section 424; or
- (b) a provision of any other enactment prescribed by the insolvency regulations for the purposes of this section.

*Section 651 of No. 18 of 2015 which it is proposed to amend—*

### **651. Security not to be enforced unless it would benefit the company**

Security given by a company at a time when a moratorium has effect in relation to the company can be enforced only if, at that time, reasonable grounds existed for believing that enforcement of the security would benefit the company.

*Section 653 of No. 18 of 2015 which it is proposed to amend—*

### **653. Company invoices and other documents to state provisional supervisor’s name and that moratorium has effect**

(1) A company in respect of which a moratorium has effect shall ensure that every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, specifies—

- (a) the provisional supervisor’s name; and
- (b) a statement that the moratorium has effect in respect of the company.

(2) If the company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

*Section 655 of No. 18 of 2015 which it is proposed to amend—*

### **655. Restrictions on disposal of property and making payments by company**

(1) Subject to subsection (2), a company in respect of which a moratorium has effect may dispose of any of its property only if—

- (a) there are reasonable grounds for believing that the disposal will benefit the company; and



(b) the disposal is approved by the moratorium committee or, if there is no such committee, by the provisional supervisor.

(2) Subsection (1) does not apply to a disposal—

(a) made in the ordinary course of the company's business; or

(b) made in accordance with an order of the Court.

(3) If a company disposes of any of its property in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence.

(4) A company that is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding two million shillings.

(5) An officer of a company who is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

*Section 656 of No. 18 of 2015 which it is proposed to amend—*

#### **656. Restriction on company paying debts and other liabilities**

(1) Subject to subsection (2), a company in respect of which a moratorium has effect may make a payment in respect of a debt or other liability of the company that was in existence before the beginning of the moratorium only if—

(a) there are reasonable grounds for believing that the payment will benefit the company; and

(b) the payment is approved by the moratorium committee or, if there is no such committee, by the provisional supervisor.

(2) Subsection (1) does not apply to a payment—

(a) required by section 657(6); or

(b) made in accordance with an order of the Court.

(3) If a company makes a payment in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence.

(4) A company that is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding one million shillings.

(5) An officer of a company who is found guilty of an offence under subsection (3) is liable on conviction to a fine not exceeding five hundred

thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

*Section 657 of No. 18 of 2015 which it is proposed to amend—*

**657. Circumstances in which company may dispose of property and goods that are subject to a security or held under credit purchase transaction**

(1) This section applies to—

- (a) property of the company that is subject to a security; and
- (b) goods that are in the possession of the company under a credit purchase transaction.

(2) A company may transfer property to which this section applies as if it were not subject to the security, but only if—

- (a) the holder of the security consents; or
- (b) the Court gives its approval.

(3) A company may dispose of goods to which this section applies as if all rights of the owner under the credit purchase transaction were vested in the company, but only if—

- (a) the owner of the goods consents; or
- (b) the Court gives its approval.

(4) Subsection (5) applies to property of a company that is subject to a security that, as created, was a floating charge.

(5) If property of a company to which this subsection applies is transferred under subsection (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the transferred property as the holder would have had in respect of the property that is subject to the security.

(6) Subsection (7) applies to—

- (a) the transfer under subsection (2) of property that is subject to a security other than a security that, as created, was a floating charge; and
- (b) the disposal under subsection (3) of goods that are in the possession of the company under a credit purchase transaction.

(7) It is a condition of a consent or an approval under subsection (2) or (3)—

(a) that the net proceeds of the transfer or disposal are to be applied; and

(b) if those proceeds are less than such amount as may be agreed, or determined by the Court, to be the net amount that would be realised on a sale of the property or goods in the open market by a willing vendor—that an amount necessary to make good the deficiency is to be applied, towards discharging the amount secured by the security or payable under the credit purchase transaction.

(8) If a condition imposed by subsection (7) relates to two or more securities, that condition requires—

(a) the net proceeds of the disposal; and

(b) if subsection (7)(b) applies—the amount referred to in that paragraph, to be applied towards discharging the amount secured by those securities in the order of their priority.

(9) If the Court gives approval for a transfer or disposal under subsection (2) or (3), the directors shall, within fourteen days after approval is given, lodge with the Registrar for registration a copy of the order giving approval.

(10) If the directors fail to comply with subsection (9), each of them who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(11) If, after any of the directors has been convicted of an offence under subsection (10), the directors continue to fail to lodge the required copy with the Registrar for registration, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

*Subdivision 4 – Provisional supervisors*

*Section 658 of No. 18 of 2015 which it is proposed to amend—*

**658. Provisional supervisor to monitor activities of company during moratorium**

(1) During the moratorium, the provisional supervisor is responsible for monitoring the company's activities in order to ascertain whether—

(a) the proposal or, if that supervisor has received notice of proposed modifications in accordance with section 663(3), the proposal as modified, has a reasonable prospect of being approved and implemented; and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) On being requested to do so by the provisional supervisor, the directors of the company shall provide to that supervisor information necessary to enable that supervisor to comply with subsection (1).

(3) In ascertaining the matters referred to in subsection (1), the provisional supervisor is entitled to rely on the information provided by the directors under subsection (2) unless that supervisor has reason to doubt its accuracy.

(4) The reference in subsection (1) (b) to the company's business is to that business as proposed to be carried on by the company during the remainder of the moratorium.

(5) If the directors fail to comply with a request made by the provisional supervisor under subsection (2), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a director has been convicted of an offence under subsection (5), the directors continue to fail comply with the request or another such request, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

*Section 659 of No. 18 of 2015 which it is proposed to amend—*

#### **659. Withdrawal of provisional supervisor's consent to act**

(1) Except with the approval of the Court, a provisional supervisor may withdraw consent to monitor a moratorium only if, during the moratorium—

(a) that supervisor concludes that—

(i) the proposal or, if that supervisor has received notice of proposed modifications under section 663(3), the proposal as modified no longer has a reasonable prospect of being approved or implemented; or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;

(b) that supervisor becomes aware that the company was not, on the lodgement date, eligible for a moratorium; or

(c) the directors fail to comply with their duty under section 658(2).

(2) The reference in subsection (1) (a) (ii) to the company's business is to the business that the company proposes to carry on during the remainder of the moratorium.

(3) If the provisional supervisor's consent is withdrawn, the moratorium ends.

(4) Within seven days after withdrawing consent, the provisional supervisor shall—

(a) give to the company and any creditor of whose claim that supervisor is aware a notice of withdrawal of consent together with a statement of reasons for the withdrawal; and

(b) lodge a copy of that notice with the Registrar for registration.

(5) A provisional supervisor who withdraws consent to monitor a moratorium without reasonable excuse commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(6) A provisional supervisor who, without reasonable excuse, fails to comply with a requirement of subsection (4) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(7) If, after being convicted of an offence under subsection (6), a provisional supervisor continues to fail to comply with the relevant requirement, that supervisor commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

*Section 660 of No. 18 of 2015 which it is proposed to amend—*

**660. Creditors and others may challenge provisional supervisor's conduct during moratorium by application made to the Court**

(1) Any creditor, director or member of the company, or any other person affected by a moratorium, who is dissatisfied with an act, omission or decision of the provisional supervisor during the moratorium may apply to the Court for an order under subsection (3).

(2) An application may be made during the moratorium or after it has ended.

(3) On the hearing of an application under subsection (1), the Court may make—

(a) an order confirming, reversing or modifying the act or decision complained of;

(b) an order giving directions to the provisional supervisor with respect to the conduct of the moratorium; or

(c) such other order as it considers appropriate.

(4) An order under subsection (3) may (among other things) end the moratorium and, if it does, it may make such consequential provision as the Court considers necessary.

*Section 661 of No. 18 of 2015 which it is proposed to amend—*

**661. Creditor may pursue claim against provisional supervisor for loss**

(1) If there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the provisional supervisor during the moratorium, the company has sustained loss; and

(b) the company does not intend to pursue any claim it may have against that supervisor, any creditor of the company may make an application to the Court for an order under subsection (3).

(2) Such an application may be made during the moratorium or after it has ended.

(3) On the hearing of such an application, the Court may make—

(a) an order directing the company to pursue any claim against the provisional supervisor;

(b) an order authorising any creditor to pursue such a claim in the name of the company; or

(c) such other order with respect to such a claim as it considers appropriate, unless the Court is satisfied that the act, omission or decision of that supervisor was reasonable in the circumstances.

(4) An order under subsection (3) may (among other things) do all or any of the following—

(a) impose conditions on any authority given to pursue a claim;

(b) direct the company to assist in pursuing a claim;

(c) give directions with respect to the distribution of money or other property received as a result of pursuing a claim;

(d) end the moratorium and, if it does, make such consequential provisions as the Court considers necessary.

(5) When hearing the application, the Court shall have regard to the interests of the members and creditors of the company as a whole.

*Section 662 of No. 18 of 2015 which it is proposed to amend—*

**662. Replacement of provisional supervisor by the Court**

(1) An application may be made to the Court for an order under subsection (3)—

- (a) if the provisional supervisor has failed to comply with any duty imposed on that supervisor under this Division or has died—by the directors of the company; or
- (b) if it is impracticable or inappropriate for that supervisor to continue as such—by those directors or that supervisor.

(2) On the hearing of an application made under subsection (1), the Court may make an order directing the provisional supervisor to be replaced as such by another authorised insolvency practitioner.

(3) An authorised insolvency practitioner may be appointed as a replacement provisional supervisor under this section only if the practitioner has lodged with the Court a written consent to act as such.

*Subdivision 5 — Consideration of proposal for and implementation of voluntary arrangement*

*Section 663 of No. 18 of 2015 which it is proposed to amend—*

**663. Provisional supervisor to convene meetings of the company and its creditors**

(1) When a moratorium has effect, the provisional supervisor shall convene—

- (a) a meeting of the company; and
- (b) a meeting of the company's creditors, to be held on such dates within the period specified in section 645(3), and at such times and places, as that supervisor considers appropriate.

(2) The persons to be summoned to a creditors' meeting under this section are all those creditors of the company of whose claims the provisional supervisor is aware.

(3) The directors of the company may, not later than seven days before the dates on which the meetings are, or either of those meetings is, to be held, give notice to the provisional supervisor of any modifications of the proposal for which the directors intend to seek the approval at those meetings.

(4) The provisional supervisor may convene as many meetings of the company and of its creditors as appear to be necessary for the purposes of this section.

*Section 664 of No. 18 of 2015 which it is proposed to amend—*

#### **664. Conduct of meetings of company and its creditors**

(1) The main purpose of the first meeting convened under section 663 is to decide whether to approve the proposal or that proposal with modifications.

(2) At the beginning of a creditors' meeting, the meeting shall elect one of their number to be chairperson of the meeting. However, if a previous creditors' meeting has been held and a creditor was elected to be chairperson of that meeting, that creditor is to be chairperson of subsequent creditors' meetings unless those creditors present at such a meeting elect another creditor in place of that creditor.

(3) At the first meeting of creditors, the chairperson shall divide the meeting into three groups for voting purposes, with the first group comprising secured creditors (if any), the second group comprising preferential creditors (if any) and the third group comprising unsecured creditors.

(4) A modification to the proposal may be approved only if the company consents to it.

(5) A modification to the proposal may provide for the replacement of the provisional supervisor by another authorised insolvency practitioner who will act as the supervisor of the proposal if it takes effect as a voluntary arrangement.

(6) If the proposal or a modification to it affects the right of a secured creditor of the company to enforce the creditor's security, it may not be approved unless—

(a) the creditor consents to it; or

(b) if the creditor does not consent to it, the creditor—

(i) would be in a position no worse than if the company was in liquidation;

(ii) would receive no less from the assets to which the creditor's security relates, or from their proceeds of sale, than any other secured creditor having a security interest in those assets that has the same priority as the creditor's; and



- (iii) would be paid in full from those assets, or their proceeds of sale, before any payment from them or their proceeds is made to any other creditor whose security interest in them is ranked below that of the creditor, or who has no security interest in them.

(7) Subject to this section, the meetings of the company and of the creditors are to be conducted in accordance with the rules (if any) prescribed by the insolvency regulations for the purposes of this section.

(8) Either meeting may at any time resolve that it be adjourned, or further adjourned.

(9) The chairperson of each meeting shall, as soon as practicable after the conclusion of the meeting—

- (a) report the result of the meeting to the Court; and
- (b) immediately after doing so, give notice of the result of the meeting to all persons to whom the notice convening the meeting was sent.

*Section 665 of No. 18 of 2015 which it is proposed to amend—*

#### **665. Approval of proposal for voluntary arrangement**

(1) This section applies to the decisions taken at the meeting of the company and the meeting of the company's creditors held in accordance with section 664 to consider a proposal for a voluntary arrangement (with or without modifications).

(2) The proposal (including any modifications) is approved if—

- (a) it is approved—
  - (i) by a majority the members of the company present (either in person or by proxy) at the meeting of the company; and
  - (ii) by a majority (in number and value) of the members of each group of creditors present (either in person or by proxy) at the meeting of creditors; or
- (b) if, despite not being not approved by a majority of the members referred to in paragraph (a)(i), it is approved by a majority (in number and value) of the members of each of the groups of creditors referred to in paragraph (a)(ii).

(3) For the purposes only of deciding whether the requisite majority by value has voted in favour of a resolution to approve the proposal—

- (a) the chairperson of the meeting may—

- (i) admit or reject proofs of debt; and
- (ii) adjourn the meeting in order to admit or reject proofs of debt; and

(b) a person whose debt has been admitted is a creditor.

(4) At any time before the deadline for making an application under this subsection, any member of the company, or any creditor, who attended or was entitled to attend the meetings may make an application to the Court for an order under subsection (7).

(5) The deadline for making an application under subsection (4) is—

- (a) the expiry of thirty days after the holding of the meetings of the company and its creditors (or if the meetings were held on different days, the later of the meetings); or
- (b) if the Court extends that period, the expiry of the extended period.

(6) Any member of the company, and any creditor, who attended or was entitled to attend the meetings is entitled to appear and be heard at the hearing of the application even if the member or creditor is not the applicant. The right conferred by this subsection may be exercised by such a member or creditor irrespective of whether the member or creditor supports or has an interest in the implementation of the proposal.

(7) On the hearing of an application made under subsection (4), the Court may—

- (a) make an order approving the proposal (with or without the modifications (if any) put to the meetings in accordance with section 664); or
- (b) make such other order as it considers appropriate.

(8) The Court may make an order under subsection (7) (a) even if the proposal (or a modification to it)—

- (a) was not approved at the company meeting; or
- (b) was not approved at the creditors' meeting by a majority of the preferential creditors' group or the unsecured creditors' group, but only if the proposed arrangement (or modification)—
  - (i) has been approved by a majority of the secured creditors' group;
  - (ii) does not discriminate among the members of the dissenting group or groups of creditors and ensures that they will be no

worse off than they would have been if the company had been liquidated; and

- (iii) respects the priorities of preferential creditors over unsecured creditors.

*Section 666 of No. 18 of 2015 which it is proposed to amend—*

**666. Voluntary arrangement binding on company and creditors**

(1) A proposal (with or without modifications) takes effect as a voluntary arrangement by the company on the day after the date on which it is approved by the Court by order made under section 665(7)(a) or on such later date as may be specified in the order.

(2) On taking effect, a voluntary arrangement binds—

(a) every member of the company who—

- (i) was entitled to vote at the meeting of the company (whether present or represented at the meeting or not); or
- (ii) would have been so entitled if the member had received notice of that meeting; and

(b) every person (including a secured creditor and a preferential creditor) who—

- (i) was entitled to vote at the meeting of creditors (whether present or represented at the meeting or not); or
- (ii) would have been so entitled if the person had received notice of that meeting, as if the member or person were a party to the arrangement.

(3) If—

- (a) when the arrangement ends—an amount payable under the arrangement to a person bound because of subsection (2) (b)(ii) has not been paid; and
- (b) the arrangement did not end prematurely, the company immediately becomes liable to pay the amount to that person.

(4) If an application for the liquidation of the company, other than an excepted application, was made before the beginning of the moratorium, the Court shall dismiss the application.

- (5) The Court may not dismiss such an application—
- (a) before the expiry of thirty days from and including the first day on which each of the reports of the meetings required by section 664(9) was made to the Court;
  - (b) while an application under section 667 is pending; or
  - (c) while an appeal against an order made under that section is pending; or
  - (d) during the period within which such an appeal may be made.

(6) In this section, “excepted application” has the meaning given by section 649(4) (effect of moratorium on creditors and others).

*Section 667 of No. 18 of 2015 which it is proposed to amend—*

**667. Right to challenge decisions relating to approved voluntary arrangement**

(1) The following persons may make an application to the Court for an order under subsection (5) —

- (a) a person entitled to vote at the company meeting or the creditors’ meeting;
- (b) a person who would have been entitled to vote at the creditors’ meeting if the person had had notice of it;
- (c) the provisional supervisor or, if the proposal has taken effect as a voluntary arrangement, the supervisor of the arrangement.

(2) Such an application may be made on one or both of the following grounds—

- (a) that, in the case of a voluntary arrangement that was approved at the meetings held in accordance with section 664 and has taken effect, the arrangement detrimentally affects the interests of a creditor, member or contributory of the company;
- (b) that some material irregularity has occurred at or in relation to either the company meeting or the creditors’ meeting.

(3) An application under subsection (1) is ineffective unless it is made—

- (a) within thirty days from and including the first day on which both of the reports required by section 664(10) have been made to the Court; or
- (b) in the case of a person who was not given notice of the creditors’ meeting— within thirty days from and including the day on which the person first became aware that the meeting had taken place.

(4) However, an application made by a person referred to in subsection (1) (b) on the ground that the arrangement detrimentally affects the person's interests may be made after the arrangement has ceased to have effect, unless the arrangement ended prematurely.

(5) If, on the hearing of an application made under this section, the Court is satisfied as to either of the grounds referred to in subsection (2), it may do any of the following—

(a) make an order revoking or suspending—

(i) any decision approving the voluntary arrangement in accordance with section 664, (conduct of meetings of company and its creditors); or

(ii) in a case in which paragraph (b) of subsection (2) is relevant—any decision taken at a meeting referred to in that paragraph;

(b) give a direction to the provisional supervisor or the supervisor—

(i) to convene further meetings to consider a revised proposal for a voluntary arrangement that the directors may make; or

(ii) in a case in which paragraph (b) of subsection (2) is relevant—to convene a further meeting, or a further creditors' meeting, to reconsider the original proposal.

(6) If, at any time after giving a direction under subsection (5)(b)(i), the Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement that has effect under section 666.

(7) If the Court gives a direction under subsection (5)(b), it may also give a direction continuing or, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(8) Subsection (9) applies if the Court, on the hearing of an application made under this section—

(a) gives a direction under subsection (5) (b); or

(b) revokes or suspends a decision under subsection (5) (a) or (6).

(9) In such a case, the Court may give such ancillary directions as it considers appropriate and, in particular, directions with respect to—

(a) acts done or omitted to be done under the voluntary arrangement since it took effect; and

(b) such acts done or omitted to be done since that time as could not have been done if a moratorium had been in effect in relation to the company when they were done or omitted to be done.

(10) Except as provided by this section, a decision taken at a meeting held in accordance with section 664 is not invalidated by an irregularity arising at or in relation to the meeting.

*Section 668 of No. 18 of 2015 which it is proposed to amend—*

### **668. Implementation of voluntary arrangement**

(1) When a voluntary arrangement has taken effect, the provisional supervisor who was appointed in respect of the moratorium becomes the supervisor of the voluntary arrangement, unless another insolvency practitioner is nominated to replace that supervisor in accordance with a modification made to the arrangement under section 664(5), in which case that practitioner becomes the supervisor of the arrangement.

(2) While the voluntary arrangement has effect, the supervisor is responsible for implementing the arrangement in the interests of the company and its creditors and monitoring its compliance by the company in accordance with its terms.

(3) A creditor of the company, or any other person, who is dissatisfied with any act, omission or decision of the supervisor of the voluntary arrangement may apply to the Court for an order under subsection (4).

(4) On the hearing of an application made under subsection (3), the Court may—

- (a) make an order confirming, reversing or modifying the act or decision of the supervisor of the voluntary arrangement;
- (b) make an order giving the supervisor directions as to how to proceed with the supervision; or
- (c) make such other order as it considers appropriate.

(5) The supervisor—

- (a) may apply to the Court for directions in relation to any particular matter arising under that arrangement; and
- (b) is included among the persons who may apply to the Court for a liquidation order or administration order to be made in respect of it.

(6) A creditor of a company in respect of which a voluntary arrangement has effect, or any other person who claims to have a

legitimate interest in the matter, may make an application to the Court for an order appointing an authorised insolvency practitioner—

- (a) to replace an existing supervisor of the arrangement;
- (b) as an additional supervisor of the arrangement; or
- (c) to fill a vacancy in the position of supervisor of the arrangement.

(7) If, on the hearing of such an application the Court considers—

- (a) that it be in the best interests of the company and its creditors to make the appointment; and
- (b) that it would be difficult or impracticable for the appointment to be made without the assistance of the Court, it shall make an order appointing the authorised insolvency practitioner specified in the application, or nominated by the applicant, to be a supervisor of the voluntary arrangement, but otherwise it shall refuse the application.

*Section 669 of No. 18 of 2015 which it is proposed to amend—*

**669. Circumstances in which moratorium may be extended**

(1) Subject to subsection (2), a meeting held under section 664 that resolves that the meeting be adjourned or further adjourned may resolve that the moratorium be extended or further extended, with or without conditions.

(2) The moratorium may not be extended or further extended to a day later than the end of the period of two months from and including—

- (a) if both meetings convened under section 663 are first held on the same date—that date; or
- (b) in any other case—on the date on which the later of those meetings is first held.

(3) At any meeting at which it is proposed to extend or further extend the moratorium, before a decision is taken with respect to that proposal, the provisional supervisor shall inform the meeting of—

- (a) the action (if any) taken by that supervisor to comply with the duty imposed by section 658 and the cost involved in taking that action; and
- (b) the action that that supervisor intends to take to continue to comply with that duty should the moratorium be extended or further extended and the expected cost of taking that action.

(4) If, in accordance with subsection (3)(b), the provisional supervisor informs a meeting of the expected cost of that supervisor's intended action, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the provisional supervisor's intended action has effect under section 673, the moratorium ends.

(6) A meeting may resolve that a moratorium that has been extended, or further extended, be ended before the end of the period of the extension or further extension.

(7) The insolvency regulations may provide for the period specified in subsection (2) to be increased or reduced.

*Section 34 of No. 2 of 2016 which it is proposed to amend—*

#### **34. Expeditious disposal of cases**

(1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination.

(2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.

(3) The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.

(4) When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances —

- (a) the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;
- (b) an application by a party for the Adjudicator to withdraw from hearing the matter;
- (c) a request by parties to settle the matter out of court;
- (d) an appeal filed in the matter where orders of stay of proceedings have been granted;



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- (e) an application by a party to summon new witnesses to court, collect new evidence, new inspection or evaluation or supplementary investigation on the subject matter of the case; and
  - (f) any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment.

