

SPECIAL ISSUE

Kenya Gazette Supplement No. 111 (National Assembly Bills No. 35)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

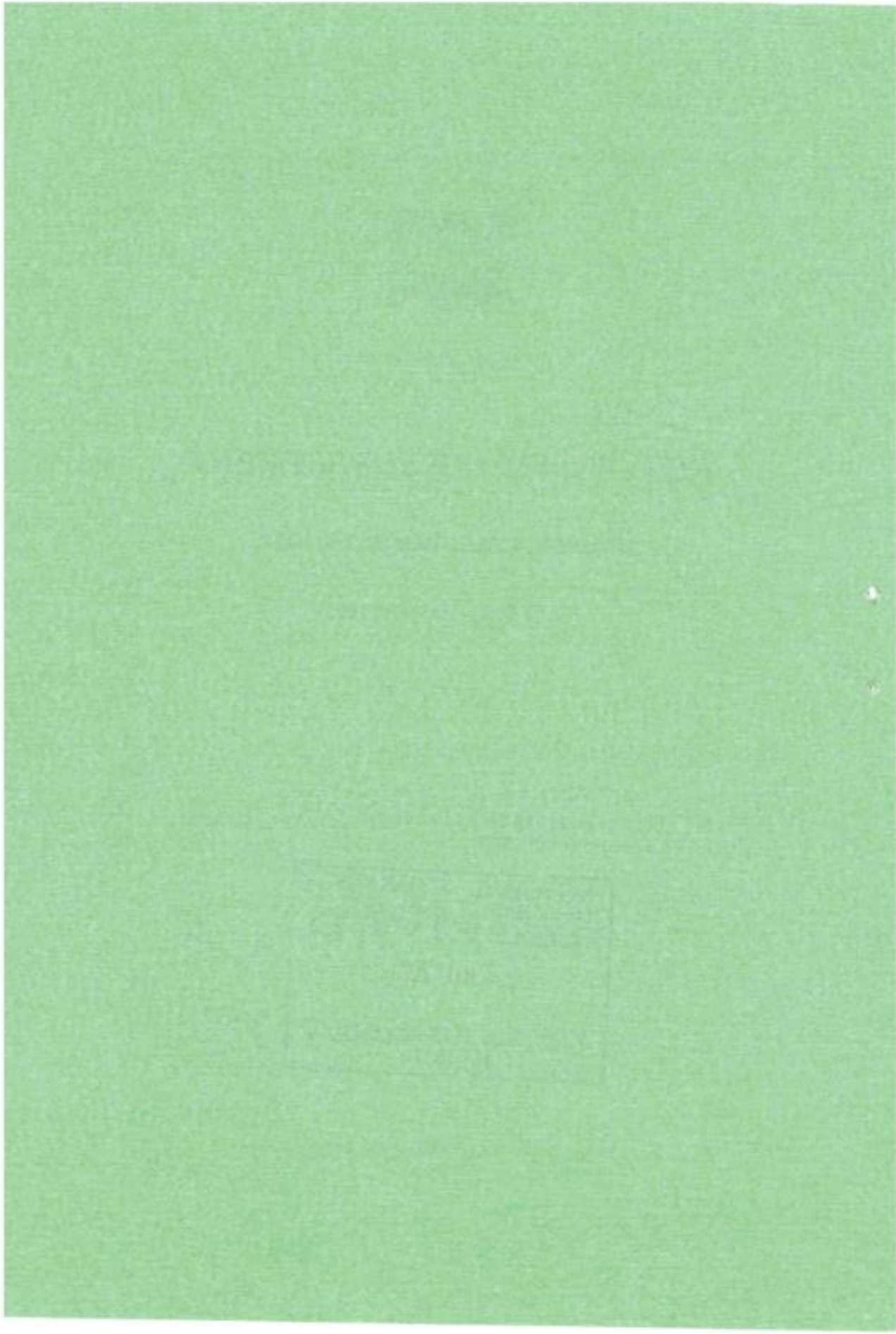
NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 11th July, 2023

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A Bill for

AN ACT of Parliament to amend the laws relating to anti-money laundering and combating of terrorism financing and proliferation financing; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023. Short title.

2. The laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column. Amendment of written laws.

SCHEDULE

(s. 2)

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
Extradition (Contiguous and Foreign Countries) Act (Cap. 76)	s.2	<p>Insert the following new definition in proper alphabetical sequence—</p> <p>“Central Authority” has the meaning assigned to it under section 2 of the Mutual Legal Assistance Act, 2012.</p>
	New	<p>Insert the following new section immediately after section 10—</p> <p>10A. (1) A fugitive criminal being sought by a requesting state may consent to be extradited to that requesting State without conducting formal extradition proceedings.</p> <p>(2) Where a fugitive criminal consents to be extradited under subsection (1), that person shall be advised of his or her rights and the legal consequences of the simplified extradition procedure and may expressly renounce his or her entitlement to the rule of speciality.</p>
		<p>Simplified extradition.</p>

(3) The consent and, where appropriate, the renunciation of the entitlement to the rule of speciality shall be recorded by a magistrate and may not be revoked.

(4) A copy of the consent referred to under subsection (3) shall be transmitted to the Central Authority with a view to arranging his or her surrender to the requesting state.

Schedule Delete the words “any offence that constitutes a terrorist act under the Prevention of Terrorism Act, 2012” appearing after the heading “Terrorist Offences” and substitute therefor the words “Any offence that constitutes a terrorist act or any offence under sections 4A, 4B, 5, 8, 9, 9A, and 14A under the Prevention of Terrorism Act, 2012.”

Extradition s.2
(Commonwea
lth Countries)
Act
(Cap. 77)

Insert the following new definition in proper alphabetical sequence—

“Central Authority” has the meaning assigned to it under section 2 of the Mutual Legal Assistance Act, 2012.

New Insert the following new section immediately after section 13—

Simplified extradition.

13A. (1) A fugitive criminal being sought by a requesting state may consent to be extradited to that requesting State without conducting formal extradition proceedings.

(2) Where a fugitive criminal consents to be extradited under subsection (1), that person shall be advised of his or her rights and the legal consequences of the simplified

extradition procedure and may expressly renounce his or her entitlement to the rule of speciality.

(3) The consent and, where appropriate, the renunciation of the entitlement to the rule of speciality shall be recorded by a magistrate and may not be revoked.

(4) A copy of the consent referred to under subsection (3) shall be transmitted to the Central Authority with a view to arranging his or her surrender to the requesting state.

Schedule Add the following new paragraph immediately after paragraph 34—

35. Any offence that constitutes a terrorist act or any offence under sections 4A, 4B, 5, 8, 9, 9A, 14A under the Prevention of Terrorism Act, 2012.

State s.2 (b)
Corporations
Act
(Cap.446)

Add the following new sub-paragraph immediately after sub-paragraph (vii)—

(viii) the Financial Reporting Centre established under the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Capital New
Markets Act
(Cap. 485A)

Insert the following new section immediately after section 12—

Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters.

12A. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the

financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Authority and whom the provision of the Proceeds of crime apply.

(2) In undertaking its mandate under subsection (1), the Authority may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of a reporting institution and its group;
- (e) compel the production of any document or information the Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or

instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;

- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Insurance Act s.2
(Cap. 487)

Delete the definition of “registration”.

Insert the following new definition in proper alphabetical sequence—

“licensing” means authorization under this Act to transact insurance business and includes renewal of licenses;

Part III

Delete the word “registration” in the heading appearing immediately after section 18 and substitute therefor the word “licensing”.

- s.19 Delete the word “authorized” appearing in the marginal note and substitute therefor the word “licensed”.
- s.19(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.20 Delete the word “registered” appearing in the marginal note and substitute therefor the word “licensed”.
- s.20(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.20(2) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.22 (a) Delete the word “registration” appearing in the marginal note and substitute therefor the word “licensing”.
- (b) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.23(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.23(5) Delete the word “registered” and substitute therefor the word “licensed”.
- s.23(6) Delete the word “registration” and substitute therefor the word “license”.
- s.25(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.25(3) Delete the word “registered” and substitute therefor the word “licensed”.
- s.26(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.26(2) Delete the word “registered” and substitute therefor the word “licensed”.
- s.27 Delete —

- (a) the word “registered” wherever it appears and substitute therefor the word “licensed”; and
 - (b) the word “registration” and substitute therefor the word “license”.
- s.27A Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.30 (a) Delete the word “registration” appearing in the marginal note and substitute therefor the word “license”.
- (b) Delete the word “registration” wherever it appears and substitute therefor the word “license”.
- s.30A(1) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.31 Delete the word “registration” appearing in the marginal note and substitute therefor the word “licensing”.
- s.32(1) Delete the word “registration” and substitute therefor the word “license”.
- s.32(2) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.33 Delete the word “unregistered” appearing in the marginal note and substitute therefor the word “unlicensed”.
- s.33(1) Delete the word “registration” and substitute therefor the word “a license”.
- s.34 Delete the word “registration” and substitute therefor the word “a license”.
- s.67A (1) Delete the word “registered” and substitute therefor the word “licensed”.

- s.67A (2) Delete the word “registered” and substitute therefor the word “licensed”.
- s.67A(4) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.67B Delete the word “registered” and substitute therefor the word “licensed”.
- s. 67C(1)(d) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.67D Delete the marginal note and substitute therefor the following new marginal note—
“Part to apply to unlicensed persons.”
- s.67D(1) Delete the words “without registration, renewal of registration or authorisation” and substitute therefor the words “without a license or renewal of a license”.
- s.67D(2)(a) Delete and substitute therefor the following new subsection—
(a) transacting insurance business without a license or renewal of license, under this Act or with persons not so licensed;
- s.68(1) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.68(2) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.68(3) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.68(4) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.

- s.68(5) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.68(6) Delete the word “registered” and substitute therefor the word “licensed”.
- s.69(4)(a) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.69(4)(b) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.113(1)(a) Delete the word “registered” and substitute therefor the word “licensed”.
- s.113(1)(b) Delete the word “registered” and substitute therefor the word “licensed”.
- s. 128 Add the following new subsection immediately after subsection (5)—
- (6) The liquidator shall maintain information and records on the beneficial ownership of the insurer for at least five years after the date on which the company is dissolved.
- s.150 Delete the word “registered” appearing in the marginal note and substitute therefor the word “licensed”.
- s.150(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.150(2) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.150A Delete the word “registration” appearing in the marginal note and substitute therefor the word “licensing”.
- s.151 Delete the word “registration” appearing in the marginal note and substitute therefor the word “licensing”.

- s.151 (1) Delete the word “registration” wherever it appears and substitute therefor the word “a license”.
- s.151(1A) Delete the word “registered” and substitute therefor the word “licensed”.
- s.152 In the opening statement—
- (a) delete the word “register” and substitute therefor the word “license”; and
 - (b) delete the word “registration” and substitute therefor the word “license”.
- s.152(d) Delete the word “registered” and substitute therefor the word “licensed”.
- s.153 Delete the marginal note and substitute therefor the following new marginal note—
“Licensing and re-licensing”.
- s.153(1)(i) Delete the word “registered” and substitute therefor the word “licensed”.
- s.153(2) Delete the word “registered” appearing after the words “a broker shall be” and substitute therefor the word “licensed”.
- s.153(3) Delete—
- (a) the word “registered” wherever it appears and substitute therefor the word “licensed”; and
 - (b) the words “registration or renewal or registration” and substitute therefor the words “licensing or renewal of a license”.
- s.155(3)(a) Delete the word “registered” and substitute therefor the word “licensed”.
- s.155(3)(b) Delete the word “registered” and substitute therefor the word “licensed”.
- Part XX Delete and substitute therefor the following new Part—

PART XX – GENERAL PROVISIONS
RELATING TO LICENSING AND
LICENCES

- s.182 Delete—
- (a) the the word “registration” wherever it appears in the definition of “applicant” and substitute therefor the words “a license”; and
- (b) the definition of “registered person” and substitute therefor the following new definition in alphabetical order—
- “licensed person” means a person licensed under this Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent;
- s.183 Delete the word “authorised” appearing in the marginal note and substitute therefor the word “licensed”.
- s.184 Delete—
- (a) the word “registered” appearing in the marginal note and substitute therefor the word “licensed”; and
- (b) the word “registered” wherever it appears and substitute therefor the word “licensed”
- s.187 Delete—
- (a) the word “registration” appearing in the marginal note and substitute therefor the word “license”; and
- (b) the word “registered” appearing in the opening statement and substitute therefor the word “licensed”.
- s.187(a) Delete the word “registered” and substitute therefor the word “licensed”.

s.187(b) Delete and substitute therefor the following new paragraph—

(b) being an insurer, gives notice in writing to the Commissioner that he wishes to carry on insurance business of a class not previously undertaken, the Commissioner may, subject in the case of additional license to compliance with the provisions relating thereto and to such terms and conditions as he considers necessary—

- (i) cancel the licence, except that, in the case of an insurer, such cancellation shall be made only with the prior approval in writing of the Cabinet Secretary;
- (ii) alter the relevant register;
- (iii) alter the licence; or
- (iv) issue a new licence,

as the circumstances require.

s.188 Delete the word “registration” appearing in the marginal note and substitute therefor the word “license”.

s.188(1) Delete and substitute therefor the following new subsection—

(1) Subject to this Act, a license issued under this Act shall expire on the 31st of December of the year of licensing:

Provided that where an application for its renewal is made under this section, the license shall be deemed to continue in force until the application for the renewal is determined.

s.188(2) Delete the word “registration” and substitute therefor the words “a license”.

- s.188(3) Delete and substitute therefor the following subsection—
- (3) The Commission may extend the time for making an application for renewal of a license on payment of such a penalty, not exceeding the prescribed fee for licensing, as he may require.
- s.188(4) Delete the word “registered” and substitute therefor the word “licensed”.
- s.189 Delete the word “certificates” appearing in the marginal note and substitute therefor the word “licences”.
- s.189(1) Delete and substitute therefor the following subsection—
- (1) Upon issuance of a licence or its renewal, the Commissioner shall issue a licence which shall be prominently displayed by the licensed person at his principal place of business in Kenya in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the licensed person in Kenya.
- s. 189(2) Delete the word “certificate” wherever it appears and substitute therefor the word “license”.
- s. 189(3) Delete and substitute therefor the following new subsection—
- (3) Upon the cancellation of a license, the licensed person shall forthwith return his license to the Commissioner.
- s. 189(4) Delete and substitute therefor the following new subsection—
- (4) A licensed person shall not display a licence after the cancellation or expiry of the licence.

- s.190 Delete the word “registered” appearing in the marginal note and substitute therefor the word “licensed”.
- s.190(1) Delete and substitute therefor the following new subsection—
- (1) If the name of a licensed person is identical to a name by which another licensed person has already been licensed, or so nearly resembles it as to be likely to deceive, the second licensed person shall, if directed in writing to do so by the Commissioner and subject to the Companies Act, 2015, change his name within a time to be specified in the direction.
- s.191(1) Delete—
- (a) the word “registered” and substitute therefor the word “licensed”; and
- (b) the word “registration” and substitute therefor the word “licensing”.
- s.191(2) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.191(3) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.192 Delete the words “registration or renewal of registration” wherever it appears and substitute therefor the words “license or renewal of a licence”.
- s.193(1) Delete—
- (a) the word “registration” and substitute therefor the word “licensing”; and
- (b) the word “registered” and substitute therefor the word “licensed”.
- s.194 Delete and substitute therefor the following new section—

False or misleading statements

194. A person who makes a false or misleading statement in an application for a licence or renewal of licence or alteration of licence, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for a licence or renewal of a licence, commits an offence and is liable to a fine not exceeding five thousand shillings.

s.195 Delete and substitute therefor the following new section—

Refusal to license. **195.** Where the Board refuses to license an application or renewal or alteration of a license, the Board shall record the reasons for its decision and shall furnish copies thereof to the applicant and the Minister.

s.196 Delete the word “registration” appearing in the marginal note and substitute therefor the words “a license”.

s.196(1) Delete and substitute therefor the following new subsection—

(1) Where a licensed person requests, by notice in writing given to the Commissioner, that his license be cancelled either totally or in respect of any particular part of his business, the Commissioner may, subject to such terms and conditions as he considers necessary, by notice in writing, cancel the license of the person, either totally or in respect of any particular part of his business.

s.196(2) Delete, in the opening statement—

- (a) the word “registered” and substitute therefor the word “licensed”; and
 - (b) the word “registration” and substitute therefor the words “a licence”.
- s. 196(2)(c) Delete the word “registered” and substitute therefor the word “licensed”.
- s. 196(2)(d) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s. 196(2)(e) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s. 196(2)(g) Delete the word “registered” and substitute therefor the word “licensed”.
- s. 196(2)(i) Delete the word “registered” wherever it appears and substitute therefor the word “licensed”.
- s.196(3) Delete and substitute therefor the following new subsection—
 - (3) A cancellation of a license made by the Commissioner under subsection (2), other than paragraph (f), (g) or (i) thereof, shall take effect thirty days after the date of the notice, and after that time no insurer whose license has been cancelled shall enter into a new contract of insurance; but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall, subject to subsection (5), continue as if the cancellation had not taken place.
- s.196(4) Delete—
 - (a) the word “registration” wherever it appears and substitute therefor the words “licence”; and

(b) the word “registered” wherever it appears and substitute therefor the word “licensed”.

s.196(5) Delete the word “registration” and substitute therefor the words “the licence”.

s.196(5A) (a) Delete the word “registration” and substitute therefor the word “licence”.

s.196(6) Delete and substitute therefor the following new subsection—

(6) Where in any case referred to in subsection (1) the default or circumstances relates to one or more, but not all, of the parts of business carried on by the licensed person, the Commissioner may, with the prior approval of the Cabinet Secretary, upon the cancellation of the license of the person, subject to such terms and conditions as he considers necessary, license the person in respect of any part of the business and issue a new license in respect of that class of business.

s.196A (1) Delete—

(a) the word “registration” appearing in the marginal note, and substitute therefor the word “licence”; and

(b) the word “registration” wherever it appears and substitute therefor the word “licence”.

(2) Renumber the existing provision as subsection (1) and insert the following new subsection immediately after section (1)

(2) The Authority shall maintain information and records on the beneficial ownership of the persons whose license is cancelled for at least five years after the date on which the license is cancelled.

New Insert the following new section immediately after section 196A—

Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters.

196B. Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Authority and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Authority may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of a reporting institution and its group;
- (e) compel the production of any document or information the Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act, 2009;

- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

(3) For purposes of this section, "reporting institution" has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

- s.197 Delete the word “registered” appearing in the marginal note and substitute therefor the word “licensed”.
- s.197(1) Delete the word “registered” and substitute therefor the word “licensed”.
- s.197(2) Delete the word “registered” and substitute therefor the word “licensed”.
- s.197(3) Delete the word “registered” and substitute therefor the word “licensed”.
- s.197(4) Delete —
(a) the word “registered” and substitute therefor the word “licensed”; and
(b) the word “registration” and substitute therefor the word “licence”.
- s.197(5) Delete the word “registered” and substitute therefor the word “licensed”.
- s.197A(1) Delete the words “registered and authorised” and substitute therefor the word “licensed”.
- s.197A(2)(a) Delete the words “registered and authorised” and substitute therefor the word “licensed”.
- s.198 Delete the word “registered” appearing in the marginal note and substitute therefor the word “licensed”.
- s.198(1) Delete the word “registration” and substitute therefor the word “a license”.
- s.204B(3) Delete the word “registered ” appearing in the opening statement and substitute therefor the word “licensed”.
- s.205 Add the following new subsection —
(2) Where a person was registered under section 19 prior to commencement of the Anti-Money Laws and Combating of Terrorism Financing Laws (Amendment) Act, 2023, that person shall be deemed to have been licensed under this Act.

- Paragraph 1 of the Second Schedule
- Banking Act (Cap. 488) s.2
- New
- s.31(3)(a)
- Delete the word “registered” and substitute therefor the word “licensed”.
- Delete the definition of “significant shareholder” and substitute therefor the following new definition—
- “significant shareholder” means a person including a beneficial owner, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to five per cent or more of the share capital of an institution or a corporate entity seeking to become an institution;
- Insert the following new definition in proper alphabetical sequence—
- “beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement;
- Delete and substitute therefor the following new paragraph—
- (a) the Central Bank may disclose any information referred to in subsection (2), including information on anti-money laundering, counter-terrorism financing and countering proliferation financing to any monetary authority, fiscal or tax agency, fraud investigations agency, domestic or foreign counter parts, or the Financial Reporting Centre, where such information is reasonably required for the proper discharge of the functions of

the Central Bank under the Proceeds of Crime and Anti-Money Laundering Act, 2009.

s.31(3)(b) Delete the proviso.

s.32 Insert the following new subsection immediately after subsection (5)—

(6) This section shall apply for anti-money laundering, counter-terrorism financing and countering proliferation financing purposes.

New Insert the following new sections immediately after section 33C—

Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters. **33D.** (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

(a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;

- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of an institution and its group;
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and

enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

(3) For purposes of this section, "reporting institution" has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Penalties for violations relating to money laundering, terrorism financing.

33E. (1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with the provisions of subsection (1) shall be liable—

- (a) in case of a legal person, to a penalty not exceeding twenty million shillings;
- (b) in the case of a natural person, to a penalty not exceeding one million shillings; and
- (c) to additional penalties not exceeding one hundred

thousand shillings in each case for each day or part thereof during which such violation or non-compliance continues.

Central Bank of Kenya Act (Cap. 491)

Insert the following new paragraph immediately after paragraph (g) —

(h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, regulate and supervise, for anti-money laundering and combating the financing of terrorism and countering proliferation financing purposes, the following institutions —

- (i) banks and their agents;
- (ii) mortgage finance companies and their agents;
- (iii) mortgage refinance companies and their agents;
- (iv) microfinance banks and their agents;
- (v) money remittance providers and their agents;
- (vi) foreign exchange bureaus and their agents;
- (vii) digital credit providers and their agents;
- (viii) payment service providers; and
- (ix) any other entity licensed by the Central Bank under any written law.

Microfinance New Act, 2006

Insert the following new sections immediately after section 36A —

(No. 19 of
2006)

Powers on anti-
money
laundering,
combating the
financing of
terrorism and
countering
proliferation
financing matters.

36B. (1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank and to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of an institution and its group;
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for

violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;

- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

Penalties for violations relating to money laundering, terrorism financing.

36C. (1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with the provisions of subsection (1) shall be liable—

- (a) in case of a legal person, to a penalty not exceeding twenty million shillings;
- (b) in the case of a natural person, to a penalty not exceeding one million shillings; and
- (c) to additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such violation or non-compliance continues.

Anti- s.2
Corruption
and Economic
Crimes Act
(No. 3 of
2003)

In the definition of “economic crime” by inserting the following new paragraph—

- (c) an offence involving the laundering of the proceeds of corruption.

The Proceeds s.2
of Crime and
Anti-Money
Laundering
Act, 2009
(No. 9 of
2009)

Insert the words “financing of terrorism and proliferation financing” immediately after the words “money laundering” in paragraph (g) in the definition of “designated non-financial businesses or professions”.

Insert the following new definition in proper alphabetical sequence—

“competent authority” means a public authority other than a self-regulatory body with designated responsibilities for combating money laundering, financing of terrorism and proliferation financing;

“financial group” means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group, together with branches or subsidiaries that are subject to Anti-Money Laundering and Combating of Terrorism Financing policies and procedures at the group level;

New Insert the following new section immediately after section 2—

Scope of application.

2A. This Act shall apply to matters relating to combating of money laundering, combating of terrorism financing and combating of the financing of proliferation of weapons of mass destruction.

s.8 Insert the following new subsection immediately after subsection (2)—

(3) For the purposes of this section, a “person” includes a financial group.

s.12(1) Insert the words “whether as a traveller or through mail or cargo” immediately after the word “Kenya”.

s.16(3) Delete and substitute therefor the following new subsection—

(3) A person who contravenes the provisions of section 12(3) is, on conviction, liable to a fine not exceeding fifty percent of the amount of the monetary instruments involved in the offence, or imprisonment for a term not exceeding five years, or to both.

s.23(1) Delete and substitute therefor the following new subsection—

(1) The principal objective of the Centre is to assist in the identification of proceeds

of crime and combating of money laundering, combating terrorism financing and combating of proliferation financing.

s.23(2)(b) Insert the words “financing of terrorism and proliferation financing” immediately after the words “money laundering”.

s.23(2)(c) Insert the words “counter financing of terrorism and counter proliferation financing” immediately after the words “anti-money laundering”.

s.24(a) Delete and substitute therefor the following new paragraph—

(a) shall receive, analyse and interpret—

- (i) all reports made pursuant to section 12;
- (ii) reports of unusual or suspicious transactions or activities made by reporting institutions pursuant to section 44;
- (iii) reports of all cash transactions made to reporting institutions pursuant to section 44;
- (iv) information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and
- (v) any additional or other information disclosed to it and obtained by it in terms of this Act, the Prevention of Terrorism Act, 2012, or any other written law;

s.24(b) Delete and substitute therefor the following new paragraphs—

- (b) shall send analysed reports received under this Act to the appropriate law

enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports, the Director-General has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering, financing of terrorism or proliferation financing;

(ba) shall, upon request, share information with a competent authority in so far as the information requested is pursuant to a written law related to combating proceeds of crime money-laundering terrorism financing or proliferation financing and is relevant to the execution of the mandate of the requesting competent authority;

- s.24(d) Insert the words “or proliferation financing” immediately after the words “financing of terrorism”.
- s.24(k) Delete the words “relating to the commission of an offence”.
- s.24(q) Delete the words “money laundering” and substitute therefor the words “anti-money laundering, counter financing of terrorism and counter proliferation financing”.
- s.24(r) Delete—
- (a) the words “the Centre” appearing at the opening of the sentence; and
 - (b) the words “or fraud investigations agency” and substitute therefor the words “investigative agency or any competent authority”.

- s.24B(1) Delete the words “by the Centre under section 24A” and substitute therefor the words “guidelines issued by the Centre under this Act”.
- s.24C(1) Delete the opening statement and substitute therefor the following new opening statement—
- (1) Where a reporting institution fails to comply with the provisions of this Act, the Centre may, for reasons disclosed in writing—
- s.36A Insert the following new subsection immediately after subsection (3)—
- (3A) A supervisory body shall, in carrying out its mandate under this Act, apply its regulatory and supervisory powers and obligations conferred to it under any written law for purposes of supervision and enforcement of the obligations to combat money laundering, terrorist financing and proliferation financing.
- s.36A (5) Insert the following new paragraph immediately after paragraph (b)—
- (ba) in writing, direct any reporting institution to—
- (i) provide information, reports or statistical returns at such intervals as may be prescribed from time to time;
- (ii) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
- (iii) perform such act as may be necessary to remedy alleged non-compliance with this Act; or
- (iv) perform such act as may be necessary to meet any obligation imposed by this Act.

s.36A(5)(e) Insert the words “terrorism financing or proliferation financing” immediately after the words “money laundering”.

New Insert in the following new sections immediately after section 36A—

Cooperation and collaboration of supervisory bodies.

36B. (1) A supervisory body may cooperate and coordinate with domestic and foreign counterparts for purposes of combating money laundering, terrorism financing or proliferation financing.

(2) In exercising the power under subsection (1), a supervisory body may—

- (a) share information and documents with a domestic or foreign counterpart;
- (b) conduct inquiries or undertake onsite inspection on behalf of domestic or foreign counterpart;
- (c) on behalf of domestic or foreign counterpart, appoint competent persons to investigate any matter under this Act;
- (d) authorise or facilitate foreign counterparts to undertake inquiries under this Act;

(3) Any information obtained under this section shall—

- (a) be kept confidential and may only be disclosed to

a third party with the written consent of the supervisory body providing the information; and

(b) shall be used only for the specified purpose.

Powers of supervisory bodies.

36C. (1) Without prejudice to the provisions of section 36A, a supervisory body shall have powers—

- (a) to supervise, monitor and ensure compliance with anti-money laundering, combating terrorism financing and countering proliferation financing requirements under this Act by reporting institutions regulated or supervised by it;
- (b) to conduct anti-money laundering, combating terrorism financing and countering proliferation financing inspections of reporting institutions regulated or supervised by it;
- (c) to compel production of any information or document relevant to monitoring compliance with the anti-money laundering, combating terrorism financing and countering proliferation financing requirements of reporting institutions

regulated or supervised by it;

(d) to issue guidelines, directions or rules for combating anti-money laundering, combating terrorism financing and countering proliferation financing purposes to reporting institutions regulated or supervised by it;

(e) through their respective legislation, to impose both monetary and administrative sanctions upon reporting institutions regulated or supervised by it for failure to comply with the anti-money laundering, combating terrorism financing and countering proliferation financing requirements; and

(f) to undertake consolidated supervision for anti-money laundering, combating terrorism financing and countering proliferation financing purposes of a reporting institution and its group.

Risk-based approach

36D. (1) The Centre and supervisory bodies shall, in fulfilling their obligation to effectively monitor reporting institutions, use a risk-based approach.

(2) The Centre and supervisory bodies shall, in applying a risk-based approach to supervision, ensure that they—

- (a) have a clear understanding of the risks of money laundering, terrorist financing and proliferation financing at national, sectoral and institutional level;
- (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services, delivery channels, geographical location and any other risk factors of the relevant reporting institutions they supervise; and
- (c) base the frequency and intensity of on-site and off-site supervision on—
 - (i) the money laundering, terrorist financing and proliferation financing risks, and the policies internal controls and procedures associated with the business activities of

a reporting institution, as identified by the Centre or supervisory body's assessment of its risk profile;

- (ii) the risks of money laundering, terrorist financing and proliferation financing in the country as identified within any information that is made available to the Centre or supervisory body; and
- (iii) the characteristics of the reporting institution, in particular the diversity and number of such institutions and the degree of discretion allowed to a reporting institution under the risk-based approach.

(3) The Centre or supervisory body shall review the assessment of the money laundering, terrorist financing and proliferation financing risk profile of a reporting institution or group, including the risks of non-compliance periodically, and

when there are major events or developments in the management and operations of the reporting institution or group.

- s.39(3) Delete—
- (a) the words “one million shillings” and substitute therefor the words “five million shillings”; and
 - (b) the words “five million shillings” and substitute therefor the words “twenty-five million shillings”.
- s.44 (1) Delete subsection (2) and substitute therefor the following new subsection—
- (2) Upon suspicion that any of the transactions or activities described in subsection (1) or any other transaction or activity could constitute or be related to money laundering, terrorism financing, proliferation financing or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the specified manner within two days after the suspicion arose.
- (2) Add the following new subsection immediately after subsection (10)—
- (11) For purposes of this section, the Centre shall specify the manner in which suspicious transaction, activity reports and cash transaction reports shall be filed.
- s.44A(1) Insert the words “terrorism financing, proliferation financing” immediately after the words “money laundering”.
- (a)
- s.44A(1) Insert the words “proliferation financing” immediately after the words “financing of terrorism”.
- (b)(ii)

s. 45(1) Delete and substitute therefor the following new subsections—

(1) A reporting institution shall identify and verify—

- (a) any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it; or
- (b) a customer whether permanent or occasional, by taking reasonable measures to establish the true identity of that person by requiring the applicant or customer to produce an official record reasonably capable of establishing the true identity of the applicant or customer.

(1A) The record envisaged under subsection (1) shall include—

- (a) in the case of an individual—
 - (i) a certificate of birth;
 - (ii) a national identity card;
 - (iii) passport;
 - (iv) a driver's licence; or
 - (v) any other official means of identification as may be prescribed;
- (b) in the case of a body corporate—
 - (i) evidence of registration or incorporation;
 - (ii) the Act establishing the body corporate;
 - (iii) a corporate resolution authorising a person to act on behalf of the

body corporate together with a copy of the latest annual return submitted in respect of the body corporate in accordance with the law under which it is established; or

(iv) any other item as may be prescribed;

(c) in the case of a government department, a letter from the accounting officer and the relevant authorization from the National Treasury.

s.45(2) Delete and substitute therefor the following new subsection—

(2) A reporting institution shall undertake customer due diligence on the existing customers or clients on the basis of materiality and risk and taking into account whether the customer due diligence measures have previously been undertaken and the adequacy of data obtained.

s.45(3) Delete the words “take reasonable measures to establish whether the person is acting on behalf of another person” and substitute therefor the words “verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.”

s.45(4) Delete and substitute therefor the following new subsection—

(a) to establish the true identity of the person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise; and

(b) to identify and verify the identity of the beneficial owner using the relevant information or data obtained from a reliable source.

s.45(5)(i) Insert the words “terrorism financing or proliferation financing” immediately after the words “money laundering”

s. 45A (1) Insert the words “or proliferation financing”
(b) immediately after the words “terrorism financing”

s. 45A (2) Delete and substitute therefor the following new subsection—

(2) In addition to enhanced customer due diligence measures, a reporting institution shall apply appropriate countermeasures, proportionate to the risk presented by countries—

(a) when called upon to do so by the Financial Action Taskforce;

(b) independently of any call by the Financial Action Taskforce to do so; or

(c) as advised by the Cabinet Secretary.

s. 45A (3) Insert the words “or proliferation financing” immediately after the words “terrorism financing” appearing in the opening statement.

Insert the following new subsection immediately after subsection (3) —

(4) The Centre shall disseminate to reporting institutions in such manner as it may determine—

(a) any high-risk country identified pursuant to this section;

(b) any countermeasures which are applicable to the country;

- (c) the concerns regarding the weaknesses in the anti-money laundering, countering of terrorism financing, countering of proliferation financing systems of that country; and
 - (d) any publicly available information published by the Financial Action Task Force (FATF) on any jurisdiction which has been identified by it as having significant or strategic deficiencies in its anti-money laundering, countering of terrorism financing and countering of proliferation financing measures.
- s.46(1)(a) Insert the words “both domestic and international” immediately after the words “all transactions”.
- s. 47(a) Insert the words “and proliferation financing” immediately after the words “money laundering.”
- s.55A(1)(a) Delete and substitute therefor the following new paragraph—
- (a) the Attorney-General, who shall be the Chairperson;
- s.55A(1)(b) Delete.
- s.55B(1)(a) Delete the words “and overseeing”.
- s.55B(1)(b) Delete the words “and overseeing”.
- s.55B(1)(c) Delete the words “and overseeing”.
- s. 130B (3) Insert the words “proliferation financing” immediately after the words “terrorism financing”.
- Fourth Delete and substitute therefor the following Schedule. new Schedule—

FOURTH SCHEDULE

[Section 44(6)]

REPORTING THRESHOLD

A reporting institution shall file reports on all cash transactions exceeding US\$ 15,000 or its

equivalent in any other currency carried out by it.

National Police Service Act, 2011 (No.11A of 2011).

Insert the following new section immediately after section 56—

Controlled delivery.

56A. (1) An authorised officer may, if he or she considers it necessary to do so, allow controlled delivery with a view of investigating an offence and the identification of persons involved in the commission of the offence.

(2) For purposes of this section—

“authorised officer” means a gazetted officer, police officer in-charge of a police station or any other person upon whom any written law vests functions of the maintenance of law and order; and

“controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of Kenya, with the knowledge and under the supervision of an authorised officer.

Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)

s.11

Insert the following new subsection immediately after subsection (3) —

(3A) State agencies and organs referred to in subsection (3) may grant the Commission access to relevant information in the prevention and investigation of economic crime.

Mutual Legal Assistance

s.2

Insert the following new definition in proper alphabetical sequence—

Act, 2011
(No. 36 of
2011)

“designated non-financial business or profession” has the meaning assigned to it under section 2 of Proceeds of Crime and Anti-Money Laundering Act, 2009;

s.43 Delete the words “secrecy rules” and substitute therefor the words “or Designated Non-Financial Business or Profession secrecy or confidentiality rules.”

National Payment System Act, 2011
(No. 39 of 2011)

New Insert the following new sections immediately after section 17—

Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters.

17A. (1) Pursuant to section 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act, 2009, the Central Bank shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting institutions regulated and supervised by the Central Bank to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 apply.

(2) In undertaking its mandate under subsection (1), the Central Bank may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;

- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of an institution and its group;
- (e) compel the production of any document or information the Central Bank may require for the purpose of discharging its supervisory mandate under Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism or countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009

and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

(3) For purposes of this section, “reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Penalties for violations relating to money laundering, terrorism financing.

17B. (1) No institution, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act, 2009, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.

(2) A person who violates or fails to comply with the provisions of subsection (1) shall be liable—

- (a) in case of a legal person, to a penalty not exceeding twenty million shillings;
- (b) in the case of a natural person, to a penalty not exceeding one million shillings; and
- (c) to additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such violation or non-compliance continues.

Limited Liability s.2

Insert the following new definitions in proper alphabetical sequence—

Partnership
Act, 2011
(No. 42 of
2011)

“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;

“Competent Authority” means the Attorney General, any criminal investigation agency established by law, law enforcement agencies including the Financial Reporting Centre and Kenya Revenue Authority;

“nominator” means an individual, group of individuals or legal person that issues instructions, directly or indirectly, to a nominee to act on their behalf in the capacity of a partner; and

“nominee partner” means an individual or legal person instructed by the nominator to act on their behalf in a certain capacity regarding a limited liability partnership;

s.17(2) Insert the following new paragraph immediately after paragraph (f)—

(fa) a copy of the register of beneficial owners;

s.29 Delete and substitute therefor the following new section—

Filing of annual
returns.

29. (1) A limited liability partnership shall file its annual returns with the Registrar within thirty days of the anniversary of its registration under this Act or any other period as the Registrar may upon application allow.

(2) The annual returns referred to under subsection (1) shall contain the following information—

- (a) the address of the limited liability partnership's registered office and, if a post office box number is known, the physical address of that office;
- (b) the limited liability partnership's principal business activities;
- (c) a declaration of solvency or insolvency;
- (d) the particulars prescribed by the regulations of—
 - (i) the manager of a limited liability partnership;
 - (ii) the partners; and
 - (iii) any person appointed by the limited liability partnership as an authorised person.

(3) If a limited liability partnership fails to comply with the requirements of subsection (1), the limited liability partnership or any officer of the limited liability partnership in default is liable to pay to the Registrar an administrative penalty of two thousand shillings.

New Insert the following new sections immediately after subsection 31—

Registers and documents to be kept.

31A. (1) A limited liability partnership shall keep at its registered office—

- (a) a notice of registration issued under this Act;

- (b) a register of the name and address of each partner, manager and legal representative where applicable;
- (c) a copy of the most recent annual declaration of solvency or insolvency;
- (d) a copy of any statement lodged with the Registrar under this Act;
- (e) a copy of a certificate, if any, issued by the Registrar under this Act;
- (f) a copy of the limited liability partnership agreement and any amendment thereto;
- (g) a register of charges and security rights created under the Movable Property Security Rights Act, 2017; and
- (h) any other documents that the Registrar may, from time to time, require to be kept.

(2) A limited liability partnership shall lodge with the Registrar, a copy of the register of the name and address of each partner, manager and legal representative where applicable, within thirty days of its preparation.

(3) A limited liability partnership shall keep the

documents in subsection (1) for a minimum period of seven years.

(4) The documents kept under subsection (1) shall be available for inspection or copying during ordinary business hours at the request of a partner.

(5) A partner who is deprived of the right to inspect the documents kept under subsection (1) may apply to the High Court to compel the limited liability partnership to provide the documents.

(6) A limited liability partnership that fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings and, in the case of a continuing offence, to a further fine not exceeding fifty thousand shillings for each day that the offence continues.

(7) The provisions of this section shall apply to foreign limited liability partnerships.

31B. (1) Every limited liability partnership shall keep a register of its beneficial owners.

(2) A limited liability partnership shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.

(3) A limited liability partnership shall lodge with the

Beneficial
owners.

Registrar a copy of its register of beneficial owners—

- (a) in the case of a proposed limited liability partnership, when submitting documents as provided under section 17 of this Act; and
- (b) in the case of existing limited liability partnership, within sixty days of coming into force of this section.

(4) The Registrar may, on the application of the limited liability partnership or for any other reason the Registrar thinks fit, extend the period referred to in subsection (3)(b) for a period not exceeding thirty days.

(5) A limited liability partnership shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.

(6) Every limited liability partnership shall keep records of its beneficial owner's information for at least ten years from the date, which a person ceases to be a beneficial owner.

(7) If a limited liability partnership fails to comply with the requirements of subsection (5), the limited liability partnership and each manager in default is liable to pay to the Registrar, an administrative penalty of two thousand shillings.

(8) If the limited liability partnership continues to fail to comply with the requirement of subsection (7), the limited liability partnership and each manager in default is liable to pay to the Registrar a further administrative penalty of one hundred shillings for each day of default.

(9) If the limited liability partnership does not comply with subsection (1) or subsection (6), the limited liability partnership, and each officer in default, commits an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(10) If, after a limited liability partnership or any of its officers is convicted of an offence under subsection (9), the limited liability partnership continues to fail to comply with the relevant requirement, the limited liability partnership, and each officer of the company who is in default, commits a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(11) Notwithstanding the provisions of subsection (9) and (10), the Registrar may give a direction to a limited liability partnership that is in breach of subsection (3)(b) specifying—

- (a) the statutory requirement of which the limited liability partnership is in breach;
- (b) the action that the limited liability partnership is required to take;
- (c) that the limited liability partnership has to comply with the direction within fourteen days; and
- (d) the consequence provided for under section 33D for failure to comply with the direction by the Registrar.

Register of
nominee partners.

31C. (1) Every limited liability partnership shall keep a register of nominee partners at its registered office.

(2) A limited liability partnership shall enter in its register of nominee partners —

- (a) the name and address of the nominee partner;
- (b) the date on which the person became a nominee partner; and
- (c) the name and address of the partner's nominator.

(3) Every limited liability partnership registered before the coming into effect of this provision shall lodge with the Registrar, a copy of its register of nominee partners within sixty days of coming into effect of this provision.

(4) A limited liability partnership shall lodge with the

Registrar, a copy of any amendment to its register of nominee partners within fourteen days after making the amendment.

(5) The register of nominee partners shall not be open to inspection by members of the public.

(6) If a limited liability partnership fails to comply with a requirement under subsection (3) or subsection (4), the limited liability partnership, and each officer in default is liable to pay to the Registrar, an administrative penalty of two thousand shillings.

(7) This section shall apply to foreign limited liability partnerships.

New Insert the following new Part immediately after section 33—

PART VIA- STRIKE OFF

New Insert the following new sections immediately after section 33—

Administrative strike off by the Registrar. 33A. (1) Where the Registrar determines that a limited liability partnership is not carrying on business or is not in operation, the Registrar may send to the registered address of the limited liability partnership or by other means as Regulations may prescribe, a communication inquiring whether the limited liability partnership is carrying on business or is in operation.

(2) For purposes of subsection (1), grounds upon

which Registrar may form a reasonable belief that a limited liability partnership is not carrying on business may include—

- (a) where a limited liability partnership has failed to file annual returns for a period of five years or more; or
- (b) where a limited liability partnership has failed to comply with the requirement to lodge a copy of the register of beneficial ownership after being issued with a directive under section 31B.

(3) The Cabinet Secretary may provide in regulations, grounds upon which a limited liability partnership may be considered not to be carrying on business for the purpose of this section.

(4) A limited liability partnership shall respond within one month of the date of the communication from the Registrar under subsection (1).

(5) Where the Registrar does not receive any response as required under subsection (4), the Registrar shall notify the limited liability partnership that—

- (a) no response has been received; and
- (b) if no response is received within one month after the date of notification under this subsection, the limited

liability partnership shall be struck off.

(6) Where the Registrar receives a response confirming that the limited liability partnership is not carrying on business or is not in operation, the Registrar shall direct the limited liability partnership to make an application for strike off.

(7) Where the Registrar does not receive a response on application under subsection (6) within one month, the Registrar may, by notice in the *Kenya Gazette* notify the limited liability partnership that, at the end of a period of three months from the date of the notice, the name of the stated limited liability partnership shall, unless cause is shown to the contrary, be struck off from the Register and the limited liability partnership shall be dissolved.

(8) Upon expiry of the period specified in the notice sent under subsection (5), the Registrar may, unless cause to the contrary, strike off the name of the limited liability partnership from the register.

(9) After striking off under this section, the Registrar shall publish in the *Kenya Gazette* a notice indicating that the name of the limited liability partnership has been struck off from the Register.

(10) On publication of the notice under subsection (9), the limited liability partnership shall be dissolved.

(11) Despite subsection (10)—

(a) any liability incurred by a manager or partner of the limited liability partnership continues to accrue to that manager or partner and may be enforced as if the limited liability partnership had not been dissolved; and

(b) nothing in this section shall affect the power of the Court to liquidate a limited liability partnership which is struck off under this section.

Duty of the Registrar on liquidation.

33B. (1) Where a limited liability partnership is in liquidation and—

(a) the Registrar reasonably believes that—

(i) the affairs of the limited liability partnership are fully wound up; or

(ii) no liquidator is acting; and

(b) the returns required to be made by the liquidator in respect of the limited liability partnership have not made for six consecutive months,

the Registrar shall publish a notice in the *Kenya Gazette* and notify the limited liability partnership or the liquidator that at the end of the notice, the name of the limited liability partnership shall, unless cause is shown to the contrary, be struck off from the Register and the partnership shall be dissolved.

(2) Upon expiry of the period specified in the notice under subsection (1), the Registrar may, unless cause is shown to the contrary, strike off the name of the limited liability partnership's name from the register.

(3) After striking the name of the limited liability partnership off the Register under subsection (2), the Registrar shall publish a notice in the *Kenya Gazette* that the name of the limited liability partnership has been struck off from the Register.

(4) On publication of the notice under subsection (3), the limited liability partnership shall be deemed to be dissolved.

(5) Despite subsection (4)—

- (a) any liability incurred by a manager and partner of the limited liability partnership shall continue to accrue to that manager or partner and may be enforced as if the limited liability had not been dissolved; and

- (b) nothing in this section shall affect the power of the Court to liquidate a limited liability partnership which is struck off under this section.

Strike off on application.

33C. (1) The Registrar may strike off the name of a limited liability partnership from the Register on application by a limited liability partnership.

(2) An application under this section shall only be effective if—

- (a) it is made on behalf of the limited liability partnership by its manager or by a majority of the partners; and
- (b) it contains such information as prescribed by regulations.

(3) The Registrar may not strike off the name of a limited liability partnership from the Register under this section until after three months from the date of the publication of a notice in the *Kenya Gazette*—

- (a) stating that the Registrar may exercise the power under this section in relation to the limited liability partnership; and
- (b) inviting any person to show cause why the name

of the limited liability partnership should not be struck off.

(4) After striking the name of the limited liability partnership off the Register, the Registrar shall publish in the *Gazette* a notice that the limited liability partnership's name has been struck off the Register and the date of the striking off.

(5) On publication of the notice under subsection (4), the limited liability partnership shall be deemed to be dissolved.

(6) Despite subsection (5)—

- (a) any the liability incurred by a manager or partner of the limited liability partnership shall continue to accrue to that manager or partner and may be enforced as if the limited liability partnership had not been dissolved; and
- (b) nothing in this section shall affect the power of the Court to liquidate a limited liability partnership which is struck off under this section.

When an application for strike off may not be made.

33D. (1) An application under section 33C shall not be made if, at any time during the preceding three months, the limited liability partnership has—

- (a) changed its name;

- (b) carried on business;
- (c) made a disposal for value of property that, immediately before ceasing to carry on business, it held for the purpose of disposal for gain in the normal course of carrying on business; or
- (d) engaged in any other activity, except one that is—
 - (i) necessary or expedient for the purpose of making an application under section 33C, or deciding whether to make an application;
 - (ii) necessary or expedient for the purpose of closing down the affair of the partnership;
 - (iii) necessary or expedient for the purpose of complying with any statutory requirement; or
 - (iv) specified by the Cabinet Secretary by order made under subsection (2); or

- (e) commenced insolvency process under the Insolvency Act, 2015, for the purposes of dissolving the limited liability partnership.

(2) The Cabinet Secretary may, by order published in the *Kenya Gazette*—

- (a) specify an activity for the purpose of subsection (1)(d)(iv); or
- (b) alter the period in relation to which the performance of an act referred to under that subsection is relevant.

(3) For the purposes of this section, a limited liability partnership shall not be treated as carrying on business only because it makes a payment in respect of a liability incurred in the course of carrying on business.

Withdrawal of an application.

33E. (1) An applicant may, at any time before the limited liability partnership's name is struck off through a prescribed notice to the Registrar withdraw an application to strike off a limited liability partnership's name off the register.

(2) Upon receipt of the notice of withdrawal under subsection (1), the Registrar shall—

- (a) send to the limited liability partnership's registered

address, a notice that the application to strike off the name of the limited liability partnership from the Register has been withdrawn; and

- (b) where a notice to strike off the limited liability partnership had been published, publish a notice in the *Kenya Gazette* indicating that the application to strike off has been withdrawn.

Objection to striking off.

33F. (1) An applicant may, by written notice to the Registrar, object an application to strike a limited liability partnership's name off the register at any time before the limited liability partnership's name is struck off the register.

(2) An objection under this section shall be made on the ground that there is reasonable cause why the name of the limited liability partnership should not be struck off.

(3) An objection to the striking off under subsection (1) shall be submitted to the Registrar by notice in the prescribed form and manner.

(4) Upon receipt of a notice of objection, the Registrar shall—

- (a) where applicable, notify the applicant in writing of the objection; and

- (b) in deciding whether to allow the objection, take into account such considerations as may be prescribed by regulations.

Requirement to keep records after strike off.

33G. (1) A manager in a limited liability partnership shall be required to keep records specified under this Part for at least seven years after the limited liability partnership has been struck off.

(2) Any person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings.

Restoration where strike off was by mistake.

33H. (1) The Registrar may restore the name of a limited liability partnership to the Register if satisfied that the striking off is a result of a mistake of the Registrar.

(2) For purposes of subsection (1), "a mistake of the Registrar" excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking off of the name of the limited liability partnership from the Register.

(3) The Registrar may restore the name of a limited liability partnership to the Register by publishing in the *Gazette* a notice

declaring the restoration takes effect on the date of publication of the notice.

Restoration by Court. **33I.** (1) An application may be made to the Court to restore to the Register a limited liability partnership that has been struck from the Register.

(2) An application under subsection (1) may be made by—

- (a) the Attorney General;
- (b) a former partner of the firm;
- (c) any person who would appear to the Court to have an interest in the limited liability partnership; or
- (d) a former manager.

Effect of restoration. **33J.** (1) Where the name of a limited liability partnership is restored to the Register under this Act, the limited liability partnership shall be deemed to be in existence as if its name had not been struck off the register.

(2) The limited liability partnership is not liable for any liability arising from an obligation to file any document with the Registrar during the time within which it was struck off.

Registers. **33K.** (1) The Registrar shall, subject to this Act, keep a register of limited liability partnerships.

(2) The Register shall comprise of—

- (a) the information relating to limited liability partnerships that is contained in documents lodged or filed with, or delivered to, the Registrar under this or any other Act;
- (b) certificates of registration issued by the Registrar; and
- (c) certificates of registration of limited liability partnership's charges and security rights created under the Movable Property Security Rights Act, 2017.

(3) The Registrar shall keep records of a struck off limited liability partnership for at least seven years after which the Registrar may arrange for the records to be transferred to the Kenya National Archives and Documentation Service.

(4) Any person may, upon payment of the prescribed fee—

- (a) inspect any public document lodged with the Registrar under this Act; or
- (b) apply for a certified or uncertified copy of a document forming part of

the public records held by the Registrar.

(5) The Registrar shall not disclose or permit the inspection of any personal identifiable information including—

- (a) telephone numbers and emails;
- (b) residential address; or
- (c) any other information that may be restricted from disclosure by any other law.

(6) The Registrar may disclose the information in subsection (5)—

- (a) to competent authorities; or
- (b) where the Court orders such information to be disclosed.

Rectification of register.

33L. (1) A person in respect of which an entry in a register—

- (a) has been omitted;
- (b) is incorrect; or
- (c) has been included in error,

may apply to the Registrar for rectification of the register.

(2) Upon receipt of the application under subsection (1), the Registrar may require the applicant to produce such document or furnish such information as the Registrar deems necessary in order to form

an opinion whether the register is to be rectified.

(3) The Registrar shall give notice of that application to such other person as the Registrar may identify being a person who appears to the Registrar to be concerned or to have an interest in the business.

(4) The Registrar may proceed to rectify the register where no objection is received from persons notified in subsection (3) above.

(5) The Registrar may, without an application being made under subsection (1), rectify the register where, in the view of the Registrar an entry—

- (a) has been omitted;
- (b) is incorrect; or
- (c) has been included in error.

Provided that the Registrar shall take into account fair administrative actions before rectifying the register.

(6) Notwithstanding subsection (1), the Registrar may refuse any application if the error, mistake or omission does not arise in the ordinary course of the discharge of the duties of the Registrar.

(7) Any person aggrieved by the refusal of the Registrar to rectify the particulars in the

register may, within thirty days of the decision of the Registrar, appeal to the High Court for determination.

s.34 Delete section 34 and substitute therefor the following new section—

Insolvency of a limited liability partnership.

34. (1) If a limited liability partnership becomes insolvent, the provisions of the Insolvency Act, 2015, shall apply with respect to the conduct of the receivership or management of the affairs of the partnership.

(2) If a limited liability partnership becomes liquidated, the provisions of the Insolvency Act, 2015 shall apply.

New Insert the following new Part immediately after section 34—

PART VIIA — FOREIGN LIMITED LIABILITY PARTNERSHIP

New Insert the following new sections immediately after section 34—

Foreign limited liability partnership.

34A. (1) A foreign limited liability partnership shall not carry on business in Kenya unless it is registered as a foreign limited liability partnership under this Act

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a for a term of not exceeding three years, or to both.

Registration of foreign limited partnerships.

34B. (1) A person seeking to register a foreign limited liability partnership shall, in addition to the requirements under sections 17, 19 and 20 of this Act, make an application to the Registrar—

- (a) in the prescribed form; and
- (b) accompanied by a notarized copy of—
 - (i) the certificate of registration from its country of origin or any other similar document;
 - (ii) the partnership agreement or any other similar document;
 - (iii) a list of partners and managers and their particulars; and
 - (iv) a list of beneficial owners and their particulars.

(2) The name of a foreign limited liability partnership may be—

- (a) the name of the limited liability partnership under the law of the country or territory in which it is incorporated; or
- (b) an alternative name specified in accordance with this Act:

Provided that the name complies with the provisions relating to names under this Act.

(3) The Registrar shall, on being satisfied with the application and on payment of a prescribed fee—

- (a) register the foreign limited liability partnership;
- (b) allocate a registration number for the foreign limited liability partnership; and
- (c) issue a notice of registration in the prescribed form.

Appointment of a local representative by a foreign limited liability partnership.

34C. (1) A foreign limited liability partnership shall, for purposes of operating in Kenya, appoint at least one local representative who shall be—

- (a) a permanent resident in Kenya; or
- (b) a Kenyan citizen who ordinarily resides in Kenya.

(2) A foreign limited liability partnership shall lodge with the Registrar the particulars of every person who acts as a local representative of the foreign limited liability partnership and the consent of the local representative to act as such.

(3) The local representative shall issue and lodge with the Registrar a written notice of his or her intention to vacate the office to the foreign limited liability partnership.

(4) Where the local representative has lodged a notice under subsection (3), he or she shall cease to be the local representative of the foreign limited liability partnership on expiry of thirty days from the date of the lodgment of the notice.

(5) A foreign limited liability partnership and every partner of the foreign limited liability partnership who fails to comply with subsection (1) commits an offence.

Registered office. **34D.** A foreign limited liability partnership shall have a registered office in Kenya to which all communications and notices may be addressed.

Annual returns. **34E.** (1) A foreign limited liability partnership shall file its annual returns with the Registrar within thirty days of the anniversary of its registration under the Act or any other period as the Registrar may upon application allow.

(2) The annual returns of a foreign limited partnership shall state the date to which it is made up and shall contain the following information—

- (a) the address of the foreign limited liability partnership's registered office and, if a postal address is given, the physical address of that office;
- (b) the foreign limited liability partnership's principal business activities;
- (c) a declaration of solvency or insolvency; and
- (d) the particulars prescribed by the regulations of—
 - (i) the manager of a foreign limited liability partnership;
 - (ii) the partners; and
 - (iii) the local representative or any person appointed by the foreign limited liability partnership as an authorised person.

(3) If a foreign limited liability partnership fails to comply with the requirements of subsection (1), the limited liability partnership and any officer of the limited liability partnership in default is liable to pay to the Registrar, an administrative penalty of two thousand shillings.

Cessation of business
in Kenya.

35F. (1) A foreign limited liability partnership that ceases operations in Kenya shall within seven days of such cessation, lodge with the Registrar a notice of the cessation.

(2) The cessation of business shall take effect upon the lodging of the notice under subsection (1).

(3) The obligation of any foreign limited liability partnership to lodge any document with the Registrar, except those documents that ought to have been lodged before such date, shall cease upon lodging of the notice under subsection (1).

(4) The Registrar shall publish a notice in the *Kenya Gazette* indicating that after ninety days from the date of publication of the notice, the name of the specified foreign limited liability partnership shall, unless cause is shown to the contrary, be struck off the Register and the limited liability partnership shall be deemed to be dissolved.

(5) Upon expiry of ninety days period specified under subsection (4), the Registrar shall—

- (a) remove the name of the foreign limited liability partnership from the Register; and

- (b) publish in the *Kenya Gazette* a notice indicating that the name of the foreign limited liability partnership has been struck off from the Register.

Notice of liquidation or dissolution.

34G (1) A foreign limited liability partnership that is liquidated or dissolved shall, within thirty days after the liquidation or the dissolution, lodge or cause to be lodged with the Registrar a notice of such liquidation or dissolution in accordance with the Insolvency Act, 2015.

(2) The Register shall on receipt of the notice under subsection (1) publish the notice in the *Kenya Gazette*.

(3) The Registrar shall, on expiry of ninety days from the date of publication of the notice under subsection (1)—

- (a) remove the name of the foreign limited liability partnership from the Register; and
- (b) publish in the *Kenya Gazette* a notice indicating that the name of the foreign limited liability partnership has been struck off from the Register.

Requirements to keep records after strike off.

34H (1) A local representative in a foreign

limited liability partnership shall be required to keep records under this Act for at least seven years after the limited liability partnership has been struck off.

(2) Any person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings.

Companies Act, 2015
(No. 17 of 2015)

Insert the following new definitions in proper alphabetical sequence —

“company secretary” has the meaning assigned to it under the Certified Public Secretaries of Kenya Act, 1988;

“nominator” means an individual, group of individuals or legal person that issues instructions directly or indirectly to a nominee to act on their behalf in the capacity of a director or a shareholder;

“nominee” means an individual or legal person instructed by the nominator to act on their behalf in a certain capacity regarding a company;

“nominee director” means an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator; and

“nominee shareholder” means a shareholder who exercises the associated voting rights according to the instructions of the nominator or receives dividends on behalf of the nominator.

s.13(4) Insert the following new paragraph immediately after paragraph (c) —

- (d) a statement of the particulars in respect of each beneficial owner of the proposed company in accordance with section 16A of this Act.
- s.14(3) Insert the following new paragraph immediately after paragraph (a) —
 - (aa) contains information as to whether any shareholder is a nominee and the particulars of their nominator;
- s.16(3) Insert the following new paragraph immediately after paragraph (c) —
 - (d) in the case of a nominee director, the fact that they are nominees and the particulars of their nominator.
- New Insert the following new section immediately after section 16—

Statement of particulars of beneficial owners. **16A.** (1) The applicant for registration shall ensure that the requisite statement of particulars of the company's beneficial owners complies with subsection (2).

(2) The statement of particulars of beneficial owners shall contain—

 - (a) the required particulars of anyone who is a beneficial owner; and
 - (b) any other matters that, on incorporation, shall be required to be entered in the company's register of beneficial owners under this Act.
- s.93(1) Delete the words “which shall include information relating to beneficial owners of the company, if any”.

s.93(2)(a) Insert the words “including information on whether the member is a nominee shareholder” immediately after the word “members”.

s.93(2)(b) Insert the words “or a nominee shareholder” immediately after the word “member”.

s.93(2)(d) Delete and substitute therefor the following new paragraph—

(d) the date on which any person ceased to be a member or a nominee shareholder.

s.93A Delete and substitute therefor the following new section—

Company to keep a register of beneficial owners **93A.** (1) Every company shall keep a register of its beneficial owners.

(2) A company shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.

(3) A company shall lodge with the Registrar a copy of its register of beneficial owners—

(a) in the case of a proposed company, when submitting documents as provided for under section 13 of this Act; and

(b) in the case of existing companies, within sixty days of coming into force of this section.

(4) The Registrar may, on the application of the company or for any other reason the Registrar thinks fit, extend the period referred to in

subsection (3)(b) for a period not exceeding thirty days.

(5) A company, other than a public listed company, shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.

(6) Notwithstanding the provisions of subsection (5), a public listed company shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within thirty days after making the amendment.

(7) Every company shall keep records of its beneficial owner's information for at least ten years from the date which a person ceases to be a beneficial owner.

(8) If a company fails to comply with the requirements of subsection (5) or subsection (6), the company, and each officer of the company in default is liable to pay to the Registrar, an administrative penalty of two thousand shillings.

(9) If the company continues to fail to comply with the requirement of subsection (8), the company, and each officer of the company in default, is liable to pay to the Registrar a further administrative penalty of one hundred shillings for each day of default.

(10) If the company does not comply with subsection (3)(b), 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.

(11) If, after a company or any of its officers is convicted of an offence under subsection (10), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(12) Notwithstanding the provisions of subsection (10) and (11), the Registrar may give a direction to a company that is in breach of subsection (3)(b) specifying—

- (a) the statutory requirement of which the company is in breach;
- (b) the action that the company is required to take;
- (c) that the company has to comply with the direction within fourteen days; and
- (d) the consequence provided for under section 894 for failure to comply with the direction by the Registrar.

s.104 Repeal.

New Insert the following new section immediately after section 138—

Register of
nominee
directors.

138A. (1) Every company shall keep a register of nominee directors at its registered office.

(2) A company shall enter in its register of nominee directors—

- (a) the name and address of the nominee director;
- (b) the date on which the person became a nominee director; and
- (c) the name and address of the nominee director's nominator.

(3) Every company registered before the coming into effect of this provision shall lodge with the Registrar, a copy of its register of nominee directors within sixty days of coming into effect of this provision.

(4) A company shall lodge with the Registrar, a copy of any amendment to its register of nominee directors within fourteen days after making the amendment.

(5) The register of nominee directors shall not be open to inspection by members of the public.

(6) If a company fails to comply with a requirement under subsection (3) or subsection (4), the company, and each officer of the company in default is liable to pay to the Registrar, an administrative penalty of two thousand shillings.

(7) This section shall apply to foreign companies registered in Part

XXXVII of this Act.

New Insert the following new section immediately after section 243—

Companies electing to have a company secretary or a contact person.

243A. (1) A private company with a paid-up capital of less than five million shillings or a company limited by guarantee may appoint a company secretary.

(2) A private company or company limited by guarantee not having a company secretary or a resident director shall be required to—

- (a) appoint a contact person who shall be a natural person with a permanent residence in Kenya; and
- (b) in the case of a company registered before the coming into effect of this provision, lodge a notice with the Registrar of the said appointment, within sixty days of coming into force of this provision.

(3) The company shall lodge with the Registrar for registration a notice of the appointment of the contact person, specifying the person's name and residential address and such other particulars (if any) as are prescribed for the purposes of this section.

(4) The contact person shall—

- (a) keep a copy of the record relating to directorship,

shareholding, beneficial ownership and any other information required to be kept by the company under the Act; and

- (b) make the copies available to competent authorities and the Registrar.

(5) A contact person who fails to comply with the provisions of subsection (4) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) Within fourteen days after a person who is the contact person of a registered company has—

- (a) died, resigned or otherwise ceased to be the contact person, the company shall lodge with the Registrar for registration a notice to the effect that the person has ceased to be a contact person of the company in Kenya and that a new contact person has been appointed in their place; or
- (b) changed his or her residential address in Kenya, the company shall lodge with the Registrar for registration a notice giving details of the change.

(7) If the company does not comply with subsection (2), the company, and each officer of the company who is in default, commits an offence and on conviction are

each liable to a fine not exceeding five hundred thousand shillings.

(8) If, after a company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) Notwithstanding the provisions of subsection (7) and (8), the Registrar may give a direction to a company that is in breach of subsection (2) and (6) specifying—

- (a) the statutory requirement of which the company is in breach;
- (b) the action that the company is required to take;
- (c) that the company has to comply with the direction within fourteen days; and
- (d) the consequences of failing to comply with the direction.

s.706(1) Insert the following new paragraph immediately after paragraph (d)—

- (e) statement on whether there has been change in the register of beneficial owner and the date of the change.

s.850(1) Delete the words “three years” and substitute therefor the words “seven years”.

s.851 Delete the words “two years” appearing in the marginal note and substitute therefor the words “seven years”.

s.851(1) Delete the words “two years” and substitute therefor the words “seven years”.

s.894 Insert the following new subsections immediately after subsection (1)—

(1A) For purposes of subsection (1), grounds upon which the Registrar may form a reasonable belief that a company is not carrying on business may include—

(a) where a company has failed to file annual returns or financial statements for a period of five years or more; or

(b) where a company has failed to comply with the requirement to lodge a copy of the register of beneficial ownership after being issued with a directive under section 93A.

(1B) The Cabinet Secretary may make regulations specifying the grounds upon which a company may be considered not to be carrying on business for the purpose of this section.

New Insert the following new section immediately after section 904—

Record
keeping after
strike-off.

904A. Where a company is struck-off pursuant to sections 894 and 897 or under any other provision in this Act, it shall be the duty of the officers, administrator or liquidator to maintain all the company records required to be maintained by the company under

this Act for at least seven years from the date of the strike off.

s.975 Insert the following new subsection immediately after subsection (1)—

(1A) The provisions of section 93A, with the exception of subsections (5) and (6), shall apply to foreign companies registered under this Part.

s.975(3) Insert the following new paragraph immediately after paragraph (g)—

(h) a statement of particulars of the beneficial owners of the foreign company in accordance with section 93A of the Act.

s.986(1) Insert the following new paragraph immediately after paragraph (b)—

(ba) its beneficial owners.

New Insert the following new section immediately after section 992 —

Record keeping after strike-off.

992A. Where a foreign company is struck-off pursuant to sections 991 and 992, it shall be the duty of the local representative of the company or the liquidator, as the case may be, to maintain all the records required to be maintained by the company under this Act for at least six years from the date of the strike off.

New Insert the following new section immediately after section 1006—

Duty of a company to keep records

1006A. (1) A company shall keep at its registered office, or at any other location that may be prescribed in regulations pursuant to section 1006, all documents required to be kept under this Act

in relation to the company including—

- (a) the evidence of name reservation of the company name;
- (b) the certificate of incorporation issued by the Registrar;
- (c) certificate of change of name, if any;
- (d) registered address or addresses of the company;
- (e) registration documents or documents submitted to the Registrar during the registration of the company;
- (f) articles of the company, if any;
- (g) the company's register of members;
- (h) the company's register of directors;
- (i) the company's register of contact persons;
- (j) the register of nominee directors and their nominator;
- (k) the company's records relating to its directors' service contracts;
- (l) the company's records relating to directors' indemnities;

- (m) the company's register of company secretaries;
- (n) the records of resolutions passed by the company;
- (o) in the case of a private company, the company's contracts relating to purchase of its own shares out of capital and documents relating to redemption or purchase of own shares out of capital;
- (p) the company's register of debenture holders;
- (q) in the case of a public company—
 - (i) reports made by the company to members regarding the outcome of investigations by the company into interests in its shares; and
 - (ii) the company's register of interests disclosed;
- (r) beneficial ownership information; and
- (s) financial records.

(2) If a company fails to comply with a requirement of this section, 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.

(3) If, after a company or any of its officers has been convicted of an offence under subsection (2), the company, and each officer of the company who is in default, commit a further offence and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

Prevention of s. 2
Terrorism
Act, 2012
(No. 30 of
2017)

Delete the definition of “funds” and substitute therefor the following new definition—

“funds” means assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets;

Insert the following new definitions in proper alphabetical sequence—

“Committee” means the Counter Financing of Terrorism Inter-Ministerial Committee established under section 40D(1) of this Act;

“proliferation acts” means manufacturing, acquiring, possessing, developing, exporting, trans-shipment, brokering, transporting, transferring, stockpiling, supplying, selling or using nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means of delivery and related materials including technology, goods, software, services or expertise in contravention of this Act or any international obligations derived from relevant United Nations Security Council Resolutions;

“reporting institution” has the meaning assigned to it under section 2 of the Proceeds of

Crime and Anti-Money Laundering Act, 2009;

New Insert the following new sections immediately after section 4—

Commission of
proliferation act.

4A. A person who, within or outside Kenya, directly or indirectly engages in a proliferation act commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding twenty years or to a fine not exceeding twenty million shillings, or to both such fine and such imprisonment.

Financing of
proliferation act.

4B. A person who by any means, within or outside Kenya, directly or indirectly, provides financial support or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds is to be used in whole or part, to carry out a proliferation act regardless of whether such funds or part thereof were actually used to commit the act, commits an offence and is liable, upon conviction, to imprisonment for a term of imprisonment not exceeding twenty years or to a fine not exceeding twenty million shillings or to both such fine and such imprisonment.

New Insert the following new section immediately after section 5—

Financing of
travel for
terrorism
purposes.

5A. A person who finances the travel of an individual to a State other than that individual's State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, a terrorist act or

the providing or receiving of terrorist training commits an offence.

s.9(2) Delete and substitute therefor the following new subsection—

(2) For the purposes of subsection (1), support includes the provision of forged or falsified travel documents or other documents, facilitation of travel, shelter, clothing, communication devices and systems.

s.24 Insert the words “or associates with or professes to associate with” immediately after the words “professes to be a member of”.

New Insert the following new sections immediately after section 30F—

Prohibition from making funds available.

30G. A Kenyan national or any other person or entity within Kenya shall not make available any funds or other assets, economic resources or financial or other related services—

- (a) directly or indirectly, wholly or jointly, for the benefit of designated persons and entities;
- (b) for entities owned or controlled, directly or indirectly, by designated persons or entities; and
- (c) for persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in

accordance with the relevant United Nations Security Council resolution.

(2) A person or entity who contravenes this section commits an offence, and is liable, on conviction—

- (a) in case of a natural person, to imprisonment for a term not exceeding twenty years; and
- (b) in case of a legal person, a fine not exceeding twenty million shillings.

Penalties for legal persons.

30H. (1) A legal person who contravenes the provisions of sections 4, 10, 11, 12, 12B, 12C, 12D, 13, 14, 14A, 21, 24, 27, 28, 29 or 30D commits an offence and is liable, on conviction, to a fine not exceeding thirty million shillings.

(2) A legal person who contravenes any other provisions not provided under subsection (1) is liable on conviction to a fine not exceeding twenty million shillings.

s.40B Insert the following new subsection immediately after subsection (2)—

(3) The Director of the Centre shall design and formulate a framework for the de-radicalisation, disengagement and re-integration programme for returnees and at-risk individuals.

s.40C Delete subsection (1) and substitute therefor the following new subsections—

(1) All persons intending to engage in activities to prevent and counter violent extremism and radicalisation through counter messaging or public outreach, and disengagement and reintegration of radicalized individuals shall seek the written approval of the Centre prior to engaging in the activities.

(1A) In granting approval under sub-section (1), the Centre shall take into consideration all relevant information, including information from security agencies.

(1B) Persons approved by the Centre under sub-section (1) shall send periodic reports to the Centre on the activities conducted and such other information as the Centre may prescribe.

(1C) The Centre shall formulate guidelines on the criteria for approval under sub-section (1).

New

Insert the following new sections immediately after section 40C—

Establishment of
Counter Financing
of Terrorism Inter-
Ministerial
Committee.

40D. (1) There is established a committee to be known as the Counter Financing of Terrorism Inter-Ministerial Committee.

(2) The Committee shall consist of—

- (a) the Cabinet Secretary responsible for matters relating to internal security, who shall be the chairperson;
- (b) the Cabinet Secretary responsible for matters relating to finance;

- (c) the Cabinet Secretary responsible for matters relating to foreign affairs;
- (d) the Attorney-General;
- (e) the Director-General of the National Intelligence Service;
- (f) the Inspector-General of Police;
- (g) the Director-General of Immigration and Citizen Services;
- (h) the Governor of the Central Bank of Kenya; and
- (i) the Director-General of the Financial Reporting Centre, who shall be the Secretary.

(3) The Committee may co-opt such other persons whose presence, participation, knowledge or skills are necessary for the proper functions of the Committee.

Functions of the Committee.

40E. (1) The functions of the Committee shall be to—

- (a) implement Resolution 1267, 1373, 1718 and 1988, resolutions relating to the suppression of terrorism financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with

weapons of mass destruction and such other related resolutions in accordance with this Act;

- (b) formulate and supervise the implementation of the National Strategy and Action Plan on Counter Financing of Terrorism; and
- (c) perform such other functions as may be conferred on it by any other written law.

(2) The Committee may, in carrying out its functions, co-ordinate with the relevant competent party and any other person for the purposes of –

- (a) identifying persons or entities for the purpose of designation;
- (b) examining and giving effect, upon a request by a foreign country, to an action initiated under the freezing mechanism of that foreign country, which is consistent with the public interest of Kenya;
- (c) considering requests for the de-listing of a designated entity under this Act and the regulations made thereunder; and
- (d) the performance of its functions under this Act.

(3) The Committee shall, in carrying out its obligations under

Resolution 1267, 1373, 1718 and 1988, the resolutions relating to the banning of travel, granting of visas and purchase of arms and related resolutions, co-ordinate with the relevant competent party for the purposes specified under subsection (2).

Powers of the Committee.

40F. (1) The Committee shall have all the powers necessary for the performance of its functions under this Act.

(2) Without prejudice to the generality of paragraph (1), the Committee shall have the powers to issue such directives, guidelines, rules or instructions as it may consider necessary for the effective implementation of these Regulations.

(3) The Committee shall determine its own procedure for the conduct of its meetings and those of its sub-committees under these Regulations.

Establishment of sub-committees.

40G. (1) The Committee may, from time to time, establish such sub-committees as it may consider necessary for the effective discharge of its functions under this Act.

(2) The Committee may co-opt into the sub-committees established under subsection (1) such other persons whose presence, participation, knowledge or skills are necessary

for the proper performance of the functions of the Committee.

(3) A person co-opted under subsection (2) may attend the meetings of the sub-committee and participate in the deliberations but shall have no right to vote at the meeting.

Law enforcement
co-ordinating
groups.

40H. (1) The Committee shall constitute such sector specific law enforcement co-ordinating groups as it may consider necessary for the implementation of this Act and the Regulations made thereunder.

(2) The Co-ordinating groups constituted under subsection (1) shall be drawn from the list of law enforcement institutions set out in the Schedule.

(3) The Committee shall designate the chairperson of the co-ordinating group from amongst the members of the team constituted under subsection (1).

(4) Each co-ordinating group constituted under subsection (1) shall be responsible for the day-to-day implementation of this Act in relation to such sector as may be specified by the Committee.

Confidentiality.

40I. (1) A member of the Committee or any other person shall not, without the consent of the Committee in writing,

publish or disclose to any person other than in the course of his or her duties, the contents of any document, communication or information which relates to, and which has come to his or her knowledge in the course of his or her duties under this Act.

(2) A person who contravenes subsection (1) commits an offence.

s.42 Insert the following new subsection immediately after subsection (3)—

(3A) A reporting institution shall monitor any transactions or activities in relation to terrorist property and shall immediately report any suspicious or unusual transaction or activity to the Centre in the prescribed manner.

New Insert the following new section immediately after section 42—

Role of the Financial Reporting Centre and supervisory bodies.

42A (1). The Financial Reporting Centre and supervisory bodies shall have the power to supervise and enforce the application of preventative measures to combat the financing of terrorism and combat the financing of proliferation acts by reporting institutions.

(2) For the purposes of this section—

“preventative measures” include measures under Part IV

of the Proceeds of Crime and Anti-Money Laundering Act, 2009; and

“Supervisory body” has the meaning assigned under section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

s.44(1) Insert the following new paragraphs immediately after paragraph (b)—

(c) the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations; or

(d) property of corresponding value.

New Insert the following new Schedule immediately after section 53—

SCHEDULE (s. 40H(2))

LAW ENFORCEMENT CO-ORDINATING GROUPS

- (a) Ministry of Interior and National Administration;
- (b) Ministry of Foreign and Diaspora Affairs;
- (c) Asset Recovery Agency;
- (d) Central Bank of Kenya;
- (e) The National Treasury;
- (f) Office of the Attorney- General;
- (g) National Intelligence Service;
- (h) Directorate of Criminal Investigations;
- (i) Financial Reporting Centre;

- (j) Immigration and Citizen Services;
- (k) Kenya Defence Forces;
- (l) National Police Service;
- (m) Kenya Maritime Authority;
- (n) Capital Markets Authority;
- (o) Insurance Regulatory Authority;
- (p) Kenya Revenue Authority;
- (q) Kenya Airports Authority;
- (r) Non-Governmental Organisations Co-ordination Board;
- (s) National Counter Terrorism Center; and
- (t) such other agency as the Cabinet Secretary may consider necessary.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to amend various Acts of Parliament relating to anti-money laundering, countering the financing of terrorism and countering the financing of proliferation of weapons of mass destruction in addressing deficiencies identified during the Mutual Evaluation of Kenya and matters incidental thereto.

The Bill seeks to amend the following laws—

The Extradition (Contiguous and Foreign Countries) Act (Cap 76)

The Bill seeks to amend the Extradition (Contiguous and Foreign Countries) Act (Cap. 76) by providing for simplified extradition measures and expressly providing for the offence of terrorism financing as an extraditable offence.

The Extradition (Commonwealth Countries) Act (Cap. 77)

The Bill seeks to amend the Extradition (Commonwealth Countries) Act (Cap. 77) by providing for simplified extradition measures and expressly providing for the offence of terrorism financing as an extraditable offence.

The State Corporations Act (Cap. 446)

The Bill seeks to amend the State Corporations Act (Cap. 446) to exclude the application of the Act to the Financial Reporting Centre thereby facilitating the operational independence of the Financial Reporting Centre in conformity with the Financial Action Task Force (FATF) Standards.

Capital Markets Act (Cap. 485A)

The Bill seeks to amend the Capital Markets Act (Cap. 485A) to empower the Capital Markets Authority to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act apply.

The Insurance Act (Cap 487)

The Bill seeks to amend the Insurance Act (Cap. 487) to empower the Insurance Regulatory Authority (IRA) to supervise its licensees and their agents under the Insurance Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply. The Bill also seeks to harmonise the licensing regime under the Act with the Financial Action Task Force (FATF) Standards.

The Banking Act (Cap. 488)

The Bill seeks to amend the Banking Act (Cap. 488) to empower the Central Bank of Kenya to supervise institutions and agents of reporting

institutions under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

The Central Bank of Kenya Act (Cap. 491)

The Bill seeks to amend the Central Bank of Kenya Act (Cap. 491) to empower the Central Bank of Kenya to supervise its licensees under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

Microfinance Act, 2006 (No. 19 of 2006)

The Bill seeks to amend the Microfinance Act, 2006, to empower the Central Bank of Kenya to supervise institutions licensed under the Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

The Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009)

The Bill seeks to amend the Proceeds of Crime and Anti-Money Laundering Act, 2009 to extend the application of preventative measures and enforcement measures applicable to anti-money laundering under the Act, combating terrorism financing and combating the financing of proliferation of weapons of mass destruction. Further to this, the Bill seeks to grant supervisory bodies powers to supervise, monitor and ensure compliance with anti-money laundering, combating terrorism financing and countering the financing of proliferation of weapons of mass destruction measures, and to align various provisions under the Act to the Financial Action Task Force (FATF) Standards.

The National Police Service Act, 2011 (No.11A of 2011)

The Bill seeks to amend the National Police Service Act, 2011, to provide for the use of controlled delivery as an investigative technique available for use by authorised officers.

The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)

The Bill seeks to amend the Ethics and Anti-Corruption Commission Act, 2011 to include the offence of Money Laundering under the Proceeds of Crime and Anti-Money Laundering Act, 2009 as an economic crime under the Act.

The Mutual Legal Assistance Act, 2011 (No. 36 of 2011)

The Bill seeks to amend the Mutual Legal Assistance Act, 2011 to expand the grounds for non-refusal of Mutual Legal Assistance.

The National Payment System Act, 2011 (No. 39 of 2011)

The Bill seeks to amend the National Payment System Act, 2011, to empower the Central Bank of Kenya to supervise institutions and agents of institutions under the National Payment Systems Act to whom the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009, apply.

The Limited Liability Partnership Act (No.42 of 2011)

The Bill seeks to amend the Limited Liability Partnership Act, 2011, to provide the requirement to file a register of beneficial owners with the Registrar under the Act.

The Prevention of Terrorism Act, 2012 (No. 12 of 2012)

The Bill seeks to amend the Prevention of Terrorism Act, 2012 to align it with the Financial Action Task Force (FATF) standards.

The Companies Act, 2015 (No. 17 of 2015)

The Bill seeks to amend the Companies Act, 2015, to provide for the requirement to deliver a statement of particulars of beneficial owners to the Registrar under the Act; provide for the requirement for companies to keep a register of beneficial owners; and to align various provisions under the Act to the Financial Action Task Force (FATF) Standards.

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

The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through annual estimates.

Dated the 11th July, 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

Schedule to Cap. 76 which it is proposed to amend—

SCHEDULE

EXTRADITION CRIMES

Organised Criminal Group Offences

Terrorist Offences

Any offence that constitutes a terrorist act under the Prevention of Terrorism Act, 2012.

Section 2 of Cap. 446 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"state corporation" means—

- (a) a state corporation established under section 3;
- (b) a body corporate established before or after the commencement of this Act by or under an Act of Parliament or other written law but not—
 - (i) the Permanent Secretary to the Treasury incorporated under the Permanent Secretary to the Treasury (Incorporation) Act (Cap. 101);
 - (ii) a local authority established under Local Government Act (Cap. 265);
 - (iii) co-operative society established under the Co-operative Societies Act (Cap. 490);
 - (iv) a building society established in accordance with the Building Societies Act (Cap. 489);
 - (v) a company incorporated under the Companies Act (Cap. 486) which is not wholly owned or controlled by the Government or by a state corporation;
 - (vi) the Central Bank of Kenya established under, the Central Bank of Kenya Act (Cap. 491);
 - (vii) deleted by Act No. 2 of 2002, Sch.;

Section 2 of Cap. 487 which it is proposed to amend—

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

“registration” means registration under this Act and includes a renewal of registration;

Heading of Part III of Cap. 487 which it is proposed to amend—

PART III – REGISTRATION OF INSURERS

Section 19 of Cap. 487 which it is proposed to amend—

19. Only authorized persons to carry on insurance business

(1) Except as otherwise provided in or under this Act, only a person registered under this Act may carry on insurance business —

- (a) in Kenya (whether in respect of Kenya insurance or reinsurance business or otherwise); or
- (b) outside Kenya in respect of Kenya business, except Kenya business that is solely reinsurance business.

Section 20 of Cap. 487 which it is proposed to amend—

20. Placing of risks with insurers and reinsurers not registered under this Act

(1) No insurer, broker, agent or other person shall directly or indirectly place any Kenya business other than reinsurance business with an insurer not registered under this Act without the prior approval, whether individually or generally, in writing of the Commissioner.

(2) No insurer, broker, agent or other person shall directly or indirectly place any reinsurance of Kenya business with an insurer not registered under this Act except under the following conditions —

- (a) in the case of treaty reinsurance, with the approval of the Commissioner to the treaty, and subject to such restrictions as he may specify;
- (b) in the case of facultative reinsurance subject to the prior approval in writing of the Commissioner to the placing of each particular risk with insurers or reinsurers not registered under this Act.

Section 22 of Cap. 487 which it is proposed to amend—

22. Prohibition of registration of certain persons

Subject to section 23, a person may be registered as an insurer under this Act only if—

- (a) the person is a body corporate registered under the Companies Act, 2015; and
- (b) at least one third of the controlling interest in the body (whether in terms of shares, paid up share capital or voting rights) is wholly under the control of—
 - (i) citizens of a Partner State of the East African Community;
 - (ii) a partnership whose partners are all citizens of a Partner State of the East African Community; or
 - (iii) a body corporate whose shares are wholly owned by citizens of a Partner State of the East African Community or the Government, or a combination of them.

Section 23 of Cap. 487 which it is proposed to amend—

23. Minimum capital requirements and holding by Kenya citizens

(1) No person shall be registered as an insurer unless he meets the minimum capital requirements specified in the Schedule.

(5) A registered insurer who permits his paid up share capital to fall below the minimum prescribed under subsection (1) commits an offence and is liable on conviction to a penalty of one hundred thousand shillings and if the offence is a continuing one, to a further fine of five thousand shillings for every day during which the offence continues.

(6) Notwithstanding any other penalty imposed under this section, the convicted insurer shall be liable to having its registration cancelled.

Section 25 of Cap. 487 which it is proposed to amend—

25. Requirements as to capital structure and voting rights

(1) No insurer being a company limited by shares shall be registered to carry on insurance business unless he satisfies all the following conditions—

(3) No insurer shall after the commencement of this Act be newly registered for carrying on any class of insurance business if he has issued shares other than ordinary shares of the nature specified in subsection (1).

Section 26 of Cap. 487 which it is proposed to amend—

26. Provisions relating to carrying on of both long term and general insurance business

(1) A person registered as an insurer under this Act shall be entitled to carry on only the class or classes of insurance business for which he has been registered.

(2) In the case of an insurer registered to carry on both long term insurance business and general insurance business, the assets of the statutory funds established under section 45 in respect of long term insurance business shall be as absolutely the security of the policy-holders of the long term insurance business as though the statutory funds belonged to an insurer carrying on no other business than long term insurance business and shall not be liable for any contracts of the insurer for which the statutory funds would not have been liable had the business of the insurer been only long term insurance business and, notwithstanding the Companies Act, shall not be applied directly or indirectly, either during the winding up or otherwise, for any purpose other than those of the long term insurance business of the insurer.

Section 27 of Cap. 487 which it is proposed to amend—

27. One-third of boards to be citizens of Kenya

A person being a body corporate incorporated in Kenya with or without a share capital shall not be registered and if registered shall have his registration cancelled, if at least one third of the members of his board of directors or managing board are not citizens of Kenya.

Section 27A of Cap. 487 which it is proposed to amend—

27A. Qualifications of board members

A person shall not be registered under section 31 unless —

Section 30 of Cap. 487 which it is proposed to amend—

30. Application for registration

An application for registration as an insurer shall be in the prescribed form and shall be accompanied by —

Section 30A of Cap. 487 which it is proposed to amend—

30A. Opening of a branch

(1) An insurer registered under this Act wishing to open a branch or a new place of business in Kenya, or to change the location of a branch, or an existing place of business, shall apply to the Authority for approval to do so.

Section 31 of Cap. 487 which it is proposed to amend—

31. Registration

(1) Where the Board is satisfied that —

Section 32 of Cap. 487 which it is proposed to amend—

32. Deposits

(1) Subject to subsection (2), an insurer applying for registration under this Act shall deposit and keep deposited with the Central Bank of Kenya (in this Part called "the Bank") in Kenya Government securities estimated at the market value of the securities on the day of deposit—

- (a) where the application is in respect of long term insurance business, a sum of five million shillings or five percentum of the total assets, whichever is higher;
- (b) where the application is in respect of general insurance business, a sum of five million shillings or five percentum of the total assets, whichever is higher;
- (c) *deleted by Act No. 7 of 2002, s. 54.*

(2) Where an applicant under subsection (1) was carrying on insurance business immediately prior to the appointed date he may deposit with the Bank in Kenya Government securities a sum of one hundred and fifty thousand shillings in respect of long term business and a sum of fifty thousand shillings in respect of general business; and if the applicant is registered he shall deposit annually thereafter further Kenya Government securities of the same amounts in respect of each of the two classes of business aforesaid, until the deposit reaches the value specified in subsection (1) for the class or classes of business for which the applicant is registered.

Section 33 of Cap. 487 which it is proposed to amend—

33. Return of deposits if unregistered

(1) A deposit made under section 32 shall be returned by the Bank if the application for registration as an insurer is not approved by the Board.

Section 34 of Cap. 487 which it is proposed to amend—

34. Deposits to be kept by Bank on behalf of insurer

Where the Board approves an application for registration under section 31, a deposit made under section 32 shall be held by the Bank on behalf of the insurer and any interest due and collected by the Bank on a deposit shall be paid to the insurer.

Section 67A of Cap. 487 which it is proposed to amend—

67A. Inspection of Insurers

(1) The Commissioner may, at any time and from time to time, and shall, if so directed by the Minister, cause an inspection to be made by any person authorized by him in writing, of any insurer and any other person registered under this Act, and of his books, accounts and records.

(2) When an inspection is made under subsection (1), the insurer and any other person registered under this Act, concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the insurer and any other person registered under this Act, and such correspondence, statements and information relating to the insurer, and any other person registered under this Act, its business and the conduct as thereof as the person as making the inspection may require and within seven days or such longer times as he may direct in writing.

(4) The person making the inspection shall submit his report to the Commissioner; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the insurer and any other person registered under this Act or any apparent mismanaging or lack of management skills in that insurer and any other person registered under this Act, and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

Section 67B of Cap. 487 which it is proposed to amend—

67B. Directions to person inspected

The Commissioner may, by notice in writing, and after giving the insurer and any other person registered under this Act, a reasonable opportunity of being heard, require the inspected person to comply by such date or within such period as maybe specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 67A.

Section 67C of Cap. 487 which it is proposed to amend—

67C. Power of the Commissioner to intervene in management

(1) This section applies and the powers conferred by subsection (2), may be exercised in the following circumstances—

- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or any part of the business, for which he is

registered, as the case may be, in a satisfactory and efficient manner;

Section 67D of Cap. 487 which it is proposed to amend—

67D. Part to apply to unregistered and unauthorized persons

(1) Without prejudice to the provisions contained under section 19, the provisions of this Part shall apply to any person who, in the opinion of the Commissioner, is, or is deemed or suspected to be carrying on or transacting insurance or reinsurance business without registration, renewal of registration or authorisation under this Act.

(2) Without prejudice to the provisions of this Part, a person who, upon inspection, is found to be—

- (a) transacting insurance business without registration, renewal of registration or authorisation, under this Act or with persons not so registered or authorized; or

Section 68 of Cap. 487 which it is proposed to amend—

68. Approved principal officer to be appointed

(1) For the purposes of this section "registered person" means a person registered under this Act as an insurer, reinsurer, broker, agent, medical insurance provider, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

(2) Every registered person shall, at all times while he is so registered, have a principal officer.

(3) The principal officer appointed under subsection (2) shall be ordinarily resident in Kenya and shall be responsible for the general control, direction and supervision of the Kenya insurance business of the registered person and shall represent the registered person for the purposes of this Act.

(4) Everything done by the principal officer or a person acting as the principal officer of the registered person in his representative capacity shall, for the purposes of this Act, be deemed to have been done by the registered person, but this subsection shall not affect any liability of the principal officer or person acting as the principal officer under this Act.

(5) Where the principal officer is, or is about to be, absent from Kenya for a period exceeding three months or for any reason unable to perform his duties as principal officer, the registered person shall, if he does not revoke the appointment and appoint another person under

subsection (2) appoint another person (not being a body corporate) resident in Kenya to act as the principal officer of the person registered for the purposes of this Act during the absence or inability.

(6) An appointment under this section shall be deemed not to have been duly made or revoked until the registered person has given notice in writing of the appointment or revocation to the Commissioner specifying the name and, in the case of an appointment, the place of residence of the person appointed.

Section 69 of Cap. 487 which it is proposed to amend—

69. Directors, managers, employees and their remuneration

(4) After the expiry of two years from the appointed date no agent, and where the agent is a company or firm, no managing or other director of an agent, and no broker, or managing or other director of a broker shall—

- (a) be appointed or continue as a director of an insurer registered under this Act;
- (b) directly or indirectly acquire or hold more than one per cent of the shares or controlling interest in an insurer registered under this Act.

Section 113 of Cap. 487 which it is proposed to amend—

113. Application to amalgamate or transfer

(1) Subject to this Act, where—

- (a) two or more insurers, registered under this Act, intend to amalgamate; or
- (b) an insurer intends to transfer insurance business of any class to another insurer and is registered under this Act,

both the insurers jointly in the former case, and the transferor in the latter case, shall apply to the Authority, for his approval of the amalgamation or transfer, as the case may be.

Section 150 of Cap. 487 which it is proposed to amend—

150. Only registered brokers, agents, risk managers, motor assessors, insurance investigator, loss adjusters, surveyors, medical insurance provider and claims setting agents to carry on business

(1) No person shall, after the expiry of three months from the appointed date, commence, transact or carry on in Kenya the business of a broker, agent, risk manager, motor assessor, insurance investigator, loss

adjuster, insurance surveyor, medical insurance provider, or claims settling agent unless he is registered under this Act.

(2) No person shall, after the expiry of three months from the appointed date, use the name of broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, insurance surveyor, medical insurance provider or claims settling agent in a manner to give the impression that he is registered to commence, transact or carry on any such business, unless he is so registered.

Section 150A of Cap. 487 which it is proposed to amend—

150A. Registration of medical insurance providers

(1) Every person engaged in the business of placing medical insurance business with an insurer in expectation of payment by way of a commission, fee, or other remuneration shall apply to the Authority for registration as a medical insurance provider under this Act.

Section 151 of Cap. 487 which it is proposed to amend—

151. Application for registration

(1) An application for registration under section 150 or renewal of registration under section 188 shall be in the form required by the Commissioner and shall be accompanied by—

(1A) Notwithstanding the provisions of subsection (1), a registered agent shall seek to be appointed by an insurer before transacting business on their behalf.

Section 152 of Cap. 487 which it is proposed to amend—

152. Disqualifications

The Commissioner shall not register or renew the registration of or keep registered any person as a broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor, medical insurance provider, or claims settling agent if—

- (d) the applicant, being a broker, is a director, employee or holds more than one per cent of the shares or controlling interest in a registered insurer;

Section 153 of Cap. 487 which it is proposed to amend—

153. Registration and re-registration

- (1) Where the Commissioner is satisfied that—

- (i) it is otherwise in the public interest that the applicant should be registered,

he may, subject to such terms and conditions as he considers necessary, including in the case of a broker the provision of such bank guarantee as may be prescribed, register or renew the registration of an applicant under this Part.

(2) A broker shall be registered under this Act only if registered as a company under the Companies Act, 2015 and if the company has a paid up capital of not less than one million shillings of which not less than sixty percent is owned —

- (a) by Kenya citizens;
- (b) by a partnership whose partners are all citizens of Kenya; or
- (c) by a corporate body whose shares are wholly owned by citizens of Kenya or which is wholly owned by the Government.

This subsection is subject to subsection (3) and has effect despite any other provision of this Act to the contrary.

(3) A broker already carrying on business as an insurance broker on the appointed date without complying with the provisions of subsection (2) relating to paid up capital may be registered as a broker, but at the time of each subsequent renewal of the registration until he complies fully with the requirement his registration shall not be renewed unless he has acquired after the immediately preceding registration or renewal of registration, as the case may be, paid up capital or additional paid up capital equal to not less than one-third of the deficiency which existed on the appointed date.

Section 155 of Cap. 487 which it is proposed to amend—

155. Returns

(1) Every corporate person registered under this Part shall furnish such audited accounts, statements and returns relating to its business at such time and in such form as may be required by the Commissioner.

(2) If it appears to the Commissioner that any account, statement or return furnished to him under provisions of this Act is inaccurate or incomplete in any respect, he may —

(a) require further information, which shall be certified, if he so directs, by an auditor or other person, as he may consider necessary; or

(b) require any document for his examination.

(3) Where—

(a) a person registered under this Part fails to comply with a requirement made under subsection (2); or

(b) the Commissioner is not satisfied as to the truth or accuracy of any account, statement or return supplied under subsection (1), or of any further information or document supplied under subsection (2), and has in writing so informed the person registered, giving his reasons,

that person shall be deemed to have failed to comply with subsection (1).

Section 182 of Cap. 487 which it is proposed to amend—

182. Interpretation of this Part

In this Part—

"applicant" means a person applying for registration, renewal of registration or alteration of registration under this Act;

"register" means a register required to be kept and maintained under section 183;

"registered person" means a person registered under this Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

Section 184 of Cap. 487 which it is proposed to amend—

184. Notification of registered persons

The Commissioner shall notify in the Gazette, within one year of the appointed date or soon as practicable thereafter, and at intervals of not more than one year thereafter, the names of registered persons and the type of business in respect of which they are registered.

Section 187 of Cap. 487 which it is proposed to amend—

187. Alteration of registration Where a registered person—

(a) in accordance with this Act ceases to carry on business of the type in respect of which he is registered; or

(b) being an insurer, gives notice in writing to the Commissioner that he wishes to carry on insurance business of a class not previously undertaken, the Commissioner may, subject in the case of additional registration to compliance with the provisions relating thereto and to such terms and conditions as he considers necessary —

- (i) cancel the registration, except that, in the case of an insurer, such cancellation shall be made only with the prior approval in writing of the Cabinet Secretary;
- (ii) alter the relevant register;
- (iii) cancel the certificate of registration;
- (iv) alter the certificate of registration;
- (v) issue a new certificate of registration,

as the circumstances require.

Section 188 of Cap. 487 which it is proposed to amend—

188. Expiry and renewal of registration

(1) Subject to this Act, the registration of a registered person shall expire on the 31st December of the year of registration:

Provided that where an application for its renewal is made under this section, the registration shall be deemed to continue in force until the application for the renewal is determined and the registration is renewed.

(2) Subject to subsection (3), an application for the renewal of registration for a year shall be made on or before the 30th September of the preceding year in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Commissioner may extend the time for making an application for renewal of registration on payment of such penalty, not exceeding the prescribed fee for registration, as he may require.

(4) This section shall not apply to a registered person who is an insurer.

Section 189 of Cap. 487 which it is proposed to amend—

189. Issue, display and surrender of certificates

(1) Upon the registration or renewal of any registration, the Commissioner shall issue a certificate of registration which shall be

prominently displayed by the registered person at his principal place of business in Kenya in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the registered person in Kenya.

(2) The Commissioner may, on payment of the prescribed fee, issue a duplicate certificate to replace a certificate which has been lost, destroyed or damaged or in any case where he considers it necessary.

(3) Upon the cancellation of a registration the person who was registered shall forthwith return his certificate of registration to the Commissioner.

(4) A registered person shall not display a certificate of registration after the cancellation or expiry of the registration in respect of which it is issued.

Section 190 of Cap. 487 which it is proposed to amend—

190. Name of registered person

(1) If the name of a registered person who has been registered is identical to a name by which another registered person has already been registered, or so nearly resembles it as to be likely to deceive, the second registered person shall, if directed in writing to do so by the Commissioner and subject to the Companies Act, 2015, change his name within a time to be specified in the direction.

Section 191 of Cap. 487 which it is proposed to amend—

191. Prohibition of other business

(1) No person shall be registered under this Act as an insurer, reinsurer or broker if he carries on or intends to carry on or intends to carry on in Kenya any business other than the business in respect of which he applies for registration.

(2) No person registered under this Act as an insurer, reinsurer or broker shall carry on in Kenya any business other than the business in respect of which he is registered.

(3) For the purposes of this section, an insurer shall not be deemed to be carrying on a business other than that in respect of which he is registered merely by reason of his having a subsidiary which is registered for a class of insurance business for which the insurer is not registered:

Provided that nothing in this subsection shall allow an insurer not registered for long term insurance business to own a subsidiary registered for any class of long term insurance business.

Section 192 of Cap. 487 which it is proposed to amend—

192. Further information

The Commissioner may in writing require an applicant for registration or renewal of registration under this Act to furnish him with such written information as he may require relating to the applicant or his business in respect of which registration or renewal thereof is sought, and the Commissioner shall not proceed with an application until that information has been furnished.

Section 193 of Cap. 487 which it is proposed to amend—

193. Alteration in particulars furnished

(1) Whenever any circumstances arise which affect the application or the contents of a document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration, the applicant or registered person, as the case may be, shall in writing, within seven days of those circumstances arising, furnish full details of the circumstances to the Commissioner.

Section 194 of Cap. 487 which it is proposed to amend—

194. False or misleading statements

A person who makes a false or misleading statement in an application for registration or renewal of registration or alteration of registration, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration or renewal of registration, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Section 195 of Cap. 487 which it is proposed to amend—

195. Refusal to register

Where the Board refuses to register an application for registration, renewal or alteration of registration, the Board shall record the reasons for its decision and shall furnish copies thereof to the applicant and the Minister.

Section 196 of Cap. 487 which it is proposed to amend—

196. Cancellation of registration

(1) Where a registered person requests, by notice in writing given to the Commissioner, that his registration be cancelled either totally or in respect of any particular part of his business, the Commissioner may, subject to such terms and conditions as he considers necessary, by notice in writing, cancel the registration of the person, either totally or in respect of any particular part of his business.

(2) The Commissioner, after giving a registered person a reasonable opportunity of making representations, may by notice in writing cancel the registration of that person, either totally or in respect of any particular part of his business—

- (a) if the person fails to comply with or acts in contravention of this Act, or any regulation or direction made or issued under this Act;
- (b) in the case of an insurer, if the Commissioner has reason to believe that an amount due by the insurer under a judgment entered in an action in Kenya arising out of a policy of insurance issued by the insurer has remained unpaid for three months after the date of the final adjudication in that action;
- (c) if the Commissioner is satisfied that the business of the person registered is not being conducted in accordance with sound insurance or business principles;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (e) where, having regard to the nature and quality of the staff of the registered person, including the professional qualifications, knowledge and experience of the staff, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (f) if the person is in liquidation;
- (g) if the business of the registered person has been transferred to or amalgamated with the business of another person without the approval of the Cabinet Secretary;

- (h) in the case of an insurer, if the business of the insurer is wholly or to an unreasonable extent re-insured with another person;
- (i) where the Commissioner has reason to believe that the person registered has not commenced to carry on insurance business or any class of business in Kenya within the period of twelve months after he was registered;
- (j) where the Cabinet Secretary considers it is otherwise in the public interest and so directs the Commissioner in writing.

(3) A cancellation of registration made by the Commissioner under subsection (2), other than paragraph (f), (g) or (i) thereof, shall take effect thirty days after the date of the notice, and after that time no insurer whose registration has been cancelled shall enter into a new contract of insurance; but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall, subject to subsection (5), continue as if the cancellation had not taken place.

(4) The Commissioner may, with the prior approval of the Cabinet Secretary, revive a registration which has been cancelled under the provisions of subsection (2), other than paragraph (f), (g) or (i) thereof, if within six months from the date on which cancellation took place the registered person concerned satisfies the Commissioner that he has complied with any requirement of this Act or any subsidiary legislation made thereunder and complies with any further directions given to him by the Commissioner.

(5) After the expiry of six months from the date on which the cancellation of registration of an insurer has taken effect under this section, the Commissioner may, with the prior approval of the Cabinet Secretary, apply to the court for a liquidation order in respect of the insurer.

(5A) Subsection (5) does not apply if—

- (a) the registration of the insurer has been revived under subsection (4); or
- (b) an application for a liquidation order has already been made to the court in respect of the insurer.

(6) Where in any case referred to in subsection (1) the default or circumstances relates to one or more, but not all, of the parts of business carried on by the registered person, the Commissioner may, with the prior approval of the Cabinet Secretary, upon the cancellation of the registration

of the person, subject to such terms and conditions as he considers necessary, register the person in respect of any part of the business and issue a new certificate in respect of that class of business.

Section 196A of Cap. 487 which it is proposed to amend—

196A. Notification of cancellation of registration

The Commissioner shall, at the beginning of each calendar year, notify in the Gazette and in at least two daily newspapers of national circulation, names of persons whose registration is cancelled under this Act and the type of business in respect of which the cancellation of registration is done.

Section 197 of Cap. 487 which it is proposed to amend—

197. Records to be maintained by registered persons

(1) A broker or agent registered under this Act shall keep and maintain at his principal place of business in Kenya a record of the name of every client, policy number, premium paid, subject-matter of insurance, the date of the inception of the policy, date of renewal, sum insured and, in respect of claims settled by the broker on behalf of an insurer, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

(2) An insurer registered under this Act for carrying on general insurance business shall keep record of the name of every policy-holder, policy number, premium paid, subject-matter of insurance, the date of the inception of the policy, date of renewal, sum insured, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

(3) An insurer registered under this Act for carrying on long term insurance business shall keep and maintain the particulars referred to in subsection (2) and in addition a record of the name of any assignee or other person having an interest in a policy, and the name of every nominee and the dates of assignment or nomination, as the case may be.

(4) A person registered under this Act other than an insurer, broker or agent shall keep and maintain a full record of all services undertaken by him in pursuance of his registration.

(5) Every person registered under the Act shall also keep and maintain such further records of information as may be prescribed

Section 197A of Cap. 487 which it is proposed to amend—

197A. Imposition of Insurance Premium Levy

(1) Subject to this Act, there shall be charged and collected a levy to be known as the insurance premium levy, which shall be paid by every insurer registered and authorized under this Act to carry on insurance business in Kenya, at such rate and in such manner as the Minister may prescribe.

(2) The Minister may, in consultation with the Board, by Order published in the Gazette, prescribe the rates of the levy imposed under subsection (1) in respect of—

- (a) gross direct premiums written by all insurers registered or authorized under this Act to carry on insurance business in Kenya; and

Section 198 of Cap. 487 which it is proposed to amend—

198. Service of notice on registered person

(1) A notice, direction or document issued under this Act may be served by delivering it or by sending it by registered post to the address mentioned in an application for registration under this Act as the principal place of business of that person or, if the Commissioner has been notified of a change of address, to the new address.

Section 204B of Cap. 487 which it is proposed to amend—

204B. Offences on Insurance Fraud

(3) An insurer, any person acting on behalf of such insurer, a person registered under the Act, garages, or any person involved in the insurance claims process, is guilty of an offence of insurance fraud where knowingly, by act or omission, with intent to injure, defraud or deceive—

Second Schedule of Cap. 487 which it is proposed to amend—

SECOND SCHEDULE

[Sections 23 and 28]

MINIMUM CAPITAL REQUIREMENTS

1. Subject to paragraph (3), no person shall be registered as an insurer unless the persons paid-up capital is—

Section 2 of Cap. 488 which it is proposed to amend—

2. Interpretation

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

"significant shareholder" means a person, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to, five per cent or more of the share capital of an institution or a corporate entity seeking to become an institution;

Section 31 of Cap. 488 which it is proposed to amend—

31. Publication of information

(3) Notwithstanding the provisions of this section—

(a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority fiscal or tax agency, fraud investigations agency;

(b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006), institutions licensed under the Sacco Societies Act, 2008 (No. 14 of 2008), institutions registered under the Co-operative Societies Act (Cap. 490), public utility companies and any other institution mandated to share credit information under any written law shall, in the ordinary course of business and in such manner and to such extent as the Cabinet Secretary may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement;

(c) The Central Bank and institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006) may, in the ordinary course of business, in such manner and to such extent as the Cabinet Secretary may, in regulations

prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

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

4A. Other objects of the Bank

- (1) Without prejudice to the generality of section 4 the Bank shall—
- (a) formulate and implement foreign exchange policy;
 - (b) hold and manage its foreign exchange reserves;
 - (c) license and supervise authorised dealers;
 - (d) formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems;
 - (da) license and supervise digital credit providers not regulated under any other written law;
 - (e) act as banker and advisor to, and as fiscal agent of the Government;
 - (f) issue currency notes and coins; and
 - (g) license and supervise mortgage refinance companies.

Section 2 of No. 3 of 2003 which it is proposed to amend—

2. Interpretation

- (1) In this Act, unless the context otherwise requires—
- “economic crime” means—
- (a) an offence under section 45; or
 - (b) an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;

Section 2 of No. 9 of 2009 which it is proposed to amend—

2. Interpretation

- (1) In this Act, unless the context otherwise requires—
- “designated non-financial businesses or professions” means—
- (a) casinos (including internet casinos);
 - (b) real estate agencies;

- (c) dealing in precious metals;
- (d) dealing in precious stones;
- (e) accountants who are sole practitioners, partners or employees within professional firms;
- (f) non-governmental organisations;
 - (fa) trust and company service providers;
 - (fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms;
- (g) such other business or profession in which the risk of money laundering exists as the Cabinet Secretary may, on the advice of the Centre, declare;

Section 12 of No. 9 of 2009 which it is proposed to amend—

12. Conveyance of monetary instruments to or from Kenya

(1) A person intending to convey monetary instruments in excess of the amount prescribed in the Second Schedule to or from Kenya shall, before so doing, report the particulars concerning that conveyance to a person authorised by the regulations for that purpose.

Section 16 of No. 9 of 2009 which it is proposed to amend—

16. Penalties

(3) A person who contravenes the provisions of section 12(3) is on conviction, liable to a fine not exceeding ten percent of the amount of the monetary instruments involved in the offence.

Section 23 of No. 9 of 2009 which it is proposed to amend—

23. Objectives of the Centre

(1) The principal objective of the Centre is to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism.

(2) Without prejudice to subsection (1), the Centre shall—

- (a) make information collected by it available to investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya;

- (b) exchange information with similar bodies in other countries regarding money laundering activities and related offences; and
- (c) ensure compliance with international standards and best practice in anti-money laundering measures.

Section 24 of No. 9 of 2009 which it is proposed to amend—

24. Functions and powers of the Centre

The Centre—

- (a) shall receive, analyse and interpret—
 - (i) reports of usual or suspicious transactions made by reporting institutions pursuant to section 12;
 - (ii) all reports made pursuant to section 44;
 - (iii) information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and
 - (iv) any additional or other information disclosed to it and obtained by it in terms of this Act.
- (b) shall send reports received under this Act to the appropriate law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports, the Director-General has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism.
- (d) shall send to the appropriate law enforcement authorities, intelligence agency, or supervisory body any other information derived from an inspection carried out pursuant to paragraph (c) if such inspection gives the Director-General reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism.
- (k) may provide information relating to the commission of an offence to any foreign financial intelligence unit or appropriate foreign law enforcement authority, subject to provisions of this Act and any conditions as may be considered appropriate by the Director-General;
- (q) shall perform such other functions in relation to money laundering as the Cabinet Secretary may direct;

(r) The Centre may request any supervisory body, monetary authority, financial regulatory authority, fiscal or tax agency, or fraud investigations agency to provide it with information where such information is reasonably required for the proper discharge of the functions of the Centre under this Act or for purposes of achieving the objectives of the Act; and

Section 24B of No. 9 of 2009 which it is proposed to amend—

24B. Powers of the Centre to impose civil penalties for non-compliance

(1) Without derogating from any criminal penalty or other sanction that may be imposed by this Act, where a person or a reporting institution is in breach of, or fails to comply with any instruction, direction or rules issued by the Centre under section 24A—

Section 24C of No. 9 of 2009 which it is proposed to amend—

24C. Disclosure in writing

(1) The Centre may for reasons disclosed in writing—

Section 36A of No. 9 of 2009 which it is proposed to amend—

36A. Responsibility for supervision of Reporting Institutions

(5) A supervisory body, in meeting its obligation referred to in subsection (2), may —

(e) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in a reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination, instruction, directive or rule made in terms of this Act, or any involvement in any money laundering activity.

Section 39 of No. 9 of 2009 which it is proposed to amend—

39. Orders to enforce compliance with obligations under this Act

(3) In granting the order pursuant to subsection (2), the High Court may order that should the reporting institution fail, without reasonable excuse, to comply with all or any provisions of the order, may order that institution, its officers, employees or partners to pay a fine not exceeding one million shillings for an individual and a fine not exceeding five million shillings for a body corporate.

Section 44 of No. 9 of 2009 which it is proposed to amend—

44. Monitoring and Report by institutions

(2) Upon suspicion that any of the transactions or activities described in subsection (1) or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.

Section 44A of No. 9 of 2009 which it is proposed to amend—

44A. Intervention by Centre

(1) Where the Centre, after consulting a reporting institution or a person required to make a report in terms of section 44, has reasonable grounds to suspect that a transaction or a proposed transaction may—

- (a) constitute money laundering and related activities; or
- (b) involve—
 - (i) the proceeds of crime or proceeds of unlawful activities or property which is connected to the proceeds of crime or unlawful activities and related activities; or
 - (ii) the proceeds of, or property which is connected to an offence relating to the financing of terrorism and related activities; or
 - (iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified or designated pursuant to the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 and related activities,

the Centre may, for purposes of achieving the objectives of the Act, direct the reporting institution or person, in writing, not to proceed with the transaction or proposed transaction or any other transaction in respect of the funds or property affected by that transaction or proposed transaction for a period not exceeding five working days as may be determined by the Centre, in order to allow the Centre to make the necessary inquiries concerning the transaction and, where the Centre considers it appropriate, to inform and advise an investigating authority, regulatory authority or tax agency.

Section 45 of No. 9 of 2009 which it is proposed to amend—

45. Obligation to verify customer identity

(1) A reporting institution shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as—

- (a) in the case of an individual—
 - (i) a birth certificate;
 - (ii) a national identity card;
 - (iii) a driver's licence;
 - (iv) a passport; or
 - (v) any other official means of identification as may be prescribed; and
- (b) in the case of a body corporate—
 - (i) evidence of registration or incorporation;
 - (ii) the Act establishing the body corporate;
 - (iii) a corporate resolution authorising a person to act on behalf of the body corporate together with a copy of the latest annual return submitted in respect of the body corporate in accordance with the law under which it is established; and
 - (iv) or any other item as may be prescribed;
- (c) in the case of a government department, a letter from the accounting officer.

(2) Upon the coming into force of this Act, a reporting institution shall undertake customer due diligence on the existing customers or clients.

(3) Where an applicant requests a reporting institution to enter into—

- (a) a continuing business relationship; or
- (b) in the absence of that relationship, any transaction.

the reporting institution shall take reasonable measures to establish whether the person is acting on behalf of another person.

(4) If it appears to a reporting institution that an applicant requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting institution shall take reasonable measures to establish the true identity of a person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(5) In determining what constitutes reasonable measures for the purposes of subsection (1) or (3), regard shall be given to all the circumstances of the case, and in particular to—

- (i) whether the applicant is a person based or incorporated in a country in which there are in force applicable provisions to prevent the use of the financial system for the purpose of money laundering; and
- (ii) any custom or practice as may, from time to time, be current in the relevant field of business.

Section 45A of No. 9 of 2009 which it is proposed to amend—

45A. Higher risk countries

(1) A reporting institution shall apply enhanced customer due diligence on business relationships and transactions with any natural and legal persons, legal arrangements or financial institutions originating from countries identified as posing a higher risk of money laundering, terrorism financing or proliferation by —

- (a) the Financial Action Task Force (FATF) as having strategic money laundering and combating financing of terrorism deficiencies, that have not made sufficient progress in addressing the said deficiencies or have not committed to an action plan to address the deficiencies; or
- (b) the Cabinet Secretary as having ongoing substantial money laundering and terrorism financing risks.

(2) In addition to enhanced customer due diligence measures, a reporting institution shall apply appropriate countermeasures, proportionate to the risk presented by countries subject to a Financial

Action Taskforce (FATF) public statement or as advised by the Cabinet Secretary.

(3) In order to protect the financial system from the ongoing and substantial money laundering or terrorism financing risks emanating from the jurisdictions referred to under subsection (2), a reporting institution shall apply countermeasures including —

Section 46 of No. 9 of 2009 which it is proposed to amend—

46. Obligation to establish and maintain customer records

(1) Subject to subsection (4), a reporting institution shall establish and maintain —

- (a) records of all transactions, in accordance with the requirements of subsection (3); and

Section 47 of No. 9 of 2009 which it is proposed to amend—

47. Obligation to establish and maintain internal reporting procedures

A reporting institution shall establish and maintain internal controls and internal reporting procedures to—

- (a) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment and which gives rise to knowledge or suspicion by the employee that another person is engaged in money laundering;

Section 55A of No. 9 of 2009 which it is proposed to amend—

55A. Asset Recovery Advisory Board

(1) There is established an advisory board to be known as the Asset Recovery Advisory Board which shall consist of—

- (a) the chairperson, who shall be appointed by the Cabinet Secretary from among members of the Advisory Board appointed under paragraphs (h) to (j);
- (b) the Attorney-General;

Section 55B of No. 9 of 2009 which it is proposed to amend—

55B. Functions of the Advisory Board

(1) The Advisory Board shall be responsible for—

- (a) advising and overseeing the Agency on the exercise of its powers and performance of its functions;
- (b) advising and overseeing the Agency on asset recovery policies and strategic priorities of the Agency;
- (c) advising and overseeing the Agency with respect to the administration of the Agency;

Section 130B of No. 9 of 2009 which it is proposed to amend—

130B. Limitation of right to privacy

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

Fourth Schedule to No. 9 of 2009 which it is proposed to amend—

FOURTH SCHEDULE

[Section 44(3).]

REPORTING THRESHOLD

A reporting institution shall file reports all cash transactions exceeding US\$ 10,000 or its equivalent in any other currency carried out by it.

Section 11 of No. 22 of 2011 which it is proposed to amend—

11. Additional functions of the Commission

(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

- (a) in relation to State officers—
 - (i) develop and promote standards and best practices in integrity and anti-corruption;
 - (ii) develop a code of ethics;
- (b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- (c) receive complaints on the breach of the code of ethics by public officers;

- (d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;
- (e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- (f) oversee the enforcement of codes of ethics prescribed for public officers;
- (g) advise, on its own initiative, any person on any matter within its functions;
- (h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;
- (i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- (j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya.

Section 43 of No. 36 of 2011 which it is proposed to amend—

43. Fiscal offences

Legal assistance shall not be refused solely on the grounds that the offence amounts to an offence of a fiscal nature or on the grounds of bank or other financial institution secrecy rules

Section 17 of No. 42 of 2011 which it is proposed to amend—

17. Requirements for registering limited liability partnerships

(1) For an entity to be registered as a limited liability partnership under this Act, a statement that complies with subsection (2) shall be lodged with the Registrar.

(2) A statement complies with this subsection if it is signed by each person who proposes to be a partner of the proposed limited liability partnership and contains the following information—

- (a) the name of that partnership;
- (b) the general nature of the proposed business of that partnership; (c) the proposed registered office of that partnership;
- (d) the name, identity document (if any), nationality, and usual place of residence of each person who will be a partner of the partnership; (e) if any of the persons referred to in paragraph (d) is a body corporate—
 - (i) the body's corporate name;
 - (ii) the body's place of incorporation or registration;
 - (iii) the body's registration number (if any); and
 - (iv) the registered office of the body to which all communications may be addressed;
- (f) the name, identity document (if any), nationality and the usual place of residence of each person who will be a manager of the partnership and, if any such person is a body corporate—
 - (i) the corporate name, place of incorporation or registration number (if any) of the body; and
 - (ii) the registered office of the body to which all communications may be addressed; and
- (g) such other information concerning the proposed limited liability partnership as may be prescribed by the regulations.

Section 29 of No. 42 of 2011 which it is proposed to amend—

29. Limited liability partnership to lodge annual declaration of solvency or insolvency with Registrar

(1) A limited liability partnership shall lodge with the Registrar a declaration by one of its managers that in the opinion of the manager, the partnership either—

- (a) appears, as at that date, to be solvent; or

(b) does not appear, as at that date, to be solvent.

(2) The declaration shall be lodged not later than fifteen months after the registration of the limited liability partnership and subsequently once in every calendar year at intervals of not more than fifteen months.

(3) However, the Registrar may, on an application by a limited liability partnership, extend the period within which the declaration may be lodged.

(4) If a limited liability partnership fails to lodge the declaration within the period referred to in subsection (2), or within the extended period referred to in subsection (3), the partnership—

- (a) commits an offence and is liable to a fine not exceeding one hundred thousand shillings; and
- (b) paragraph 3(2)(d) of the Fifth Schedule applies.

(5) A manager of a limited liability partnership who makes a declaration without having reasonable grounds for believing that the partnership is solvent, commits an offence and is liable on conviction—

- (a) if the manager is a natural person, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both; or
- (b) if the manager is a body corporate, to a fine not exceeding fifty thousand shillings.

(6) A person who, in a declaration made under this section, makes a statement or gives information (whether directly or indirectly) to a manager that is false or misleading, when the person knows or ought reasonably to have known that the statement or information is false or misleading, commits an offence and is liable on conviction—

- (a) in the case of a natural person, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both; and
- (b) in the case of a body corporate, to a fine not exceeding two hundred and fifty thousand shillings.

(7) If an offence under this section is committed with intent to defraud a creditor of the limited liability partnership or for a fraudulent purpose, the offender is liable on conviction—

- (a) if the offender is a natural person, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding three years, or to both; and
- (b) if the offender is a body corporate, to a fine not exceeding two hundred and fifty shillings.

(8) For the purposes of this section, “solvent”, in relation to a limited liability partnership, means the ability of the partnership to pay its debts as they become due in the ordinary course of business.

Section 34 of No. 42 of 2011 which it is proposed to amend—

34. Insolvency and winding up of limited partnership

(1) If a limited liability partnership becomes insolvent, the Fourth Schedule shall have effect with respect to the appointment of a receiver or manager in respect of the partnership and the conduct of the receivership or management of the affairs of the partnership.

(2) The Minister may make regulations, not inconsistent with the Fourth Schedule, providing for the insolvency and winding up of a limited liability partnership, or a foreign limited liability partnership.

Section 93 of No. 17 of 2015 which it is proposed to amend—

93. Company to keep register of members

(1) Every company shall keep a register of its members which shall include information relating to beneficial owners of the company, if any.

(2) A company shall enter in its register of members—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) *deleted by Act No. 12 of 2019, Sch.;*
- (d) the name and address of the beneficial owners, if any.

Section 93A of No. 17 of 2015 which it is proposed to amend—

93A. Company to keep register of beneficial owners

(1) Every company shall keep a register of its beneficial owners.

(2) A company shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.

(3) A company shall lodge with the Registrar a copy of its register of beneficial owners, within thirty days after completing its preparation.

(4) A company other than a public listed company shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.

(5) If a company fails to comply with a requirement of this section, 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.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

Section 104 of No. 17 of 2015 which it is proposed to amend—

104. Trusts not to be entered on register

(1) A company shall not accept, and shall not enter in its register of members, notice of any trust, expressed, implied or constructive.

(2) If a company contravenes 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 850 of No. 17 of 2015 which it is proposed to amend—

850. Preservation of original documents

(1) Subject to section 854(3), the Registrar shall keep the originals of documents lodged with the Registrar in hard copy form for not less than three years after they are lodged.

Section 851 of No. 17 of 2015 which it is proposed to amend—

51. Power of Registrar to destroy records of dissolved company after lapse of two years

(1) At any time after the expiry of two years from the date on which—

- (a) a company has been dissolved; or
- (b) a foreign company has ceased to be registered as such in Kenya, the Registrar may arrange for the transfer to the Kenya National Archives and Documentation Service of the records recorded in the Register, or the Foreign Companies Register, in relation to the company.

Section 2 of No. 30 of 2017 which it is proposed to amend—

2. Interpretation

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

"funds" mean assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in such assets;

Section 9 of No. 12 of 2017 which it is proposed to amend—

9. Soliciting and giving of support to terrorist groups or for the commission of terrorist acts

(2) For the purposes of subsection (1), support includes the provision of forged or falsified travel or other documents.

Section 24 of No. 12 of 2017 which it is proposed to amend—

24. Membership of terrorist groups

A person who is a member of, or professes to be a member of a terrorist group commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

Section 40C of No. 12 of 2017 which it is proposed to amend—

40C. Responsibility of the public and government bodies

(1) The Centre shall be an approving and reporting institution for all civil society organisations and international non-governmental organisations engaged in preventing and countering violent extremism and radicalisation through counter-messaging or public outreach, and disengagement and reintegration of radicalised individuals.

