

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2019**

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**NAIROBI, 7th November, 2019**

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**THE FINANCE ACT****No. 23 of 2019***Date of Assent: 7th November, 2019**Date of Commencement: See Section 1***AN ACT of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto****ENACTED** by the Parliament of Kenya, as follows—**PART I—PRELIMINARY**

**1.** This Act may be cited as the Finance Act, 2019, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

- (a) sections 7, 8, 10, 14 and 49, on the 1st January, 2020; and
- (b) all other sections, on the assent.

**PART II—INCOME TAX**

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

Amendment of s. 2 of Cap. 470.

- (a) by deleting the definition of “demurrage charges”.
- (b) by inserting the following definition in proper alphabetical sequence—

“investee company” has the meaning assigned to it under the Capital Markets Act and the regulations made thereunder.

Cap. 485A.

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

Amendment of s. 3 of Cap. 470.

- (a) in subsection (2) by inserting the following new paragraph immediately after paragraph (c)—
  - (ca) income accruing through a digital marketplace;
- (b) by inserting the following new subsection immediately after subsection (2)—
  - (2A) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2) (ca).

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

(ba) “digital marketplace” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means;

**4.** Section 7A of the Income Tax Act is amended by deleting the proviso thereto and substituting therefor the following new proviso—

Amendment of s. 7A of Cap. 470.

Provided that this section shall not apply to income which is exempt under this Act.

**5.** Section 9 of the Income Tax Act is amended in subsection (1) by inserting the following proviso—

Amendment of s. 9 of Cap. 470.

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income derived from Kenya.

**6.** Section 10 of the Income Tax Act is amended in subsection (1) by—

Amendment of s. 10 of Cap. 470.

- (a) deleting paragraph (i);
- (b) inserting the words “or reinsurance” immediately after the word “insurance” appearing in paragraph (j);
- (c) inserting the words “except for deductions provided for by agreements under section 41” to paragraph (ii) of the proviso thereto;

**7.** The Income Tax Act is amended by repealing section 12C and replacing it with following new section—

Repeal and replacement of s. 12C of Cap. 470.

Turnover and presumptive tax.

**12C** (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business does not exceed or is not expected to exceed five million shillings during any year of income.

(2) Despite subsection (1), a person who would otherwise be liable to pay turnover tax under this section may, by

notice in writing addressed to the Commissioner, elect not to be subject to the provisions of this section, in which case the other provisions of this Act shall apply to such person.

(3) Notwithstanding subsection (1), turnover tax shall not apply to—

- (a) rental income;
- (b) management or professional or training fees;
- (c) the income of incorporated companies; or
- (d) any income which is subject to a final withholding tax under this Act.

(4) A person subject to turnover tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(5) A person required to pay turnover tax under this section shall be liable to pay presumptive tax equal to fifteen percent of the amount payable for a business permit or trading license issued by a county government which shall be offset against the tax payable under subsection (1).

(6) The presumptive tax under subsection (5) shall be payable at the time of payment for the business permit or trade license or renewal of the licences.

(7) A person subject to turnover tax under this section shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedures Act, 2015.

(8) For purposes of this section “tax period” means a calendar month.

**8.** Section 16 of the Income Tax Act is amended in subsection (2) by deleting the proviso to paragraph (j) and substituting therefor the following new proviso—

Amendment of s.  
34 of Cap. 470.

Provided that this paragraph—

- (i) shall apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company; and
- (ii) shall not apply to a company implementing a project under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing.

**9.** Section 20 of the Income Tax Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c)—

Amendment of s. 20 of Cap. 470.

- (d) an investee company of a real estate investment trust.

**10.** Section 22C of the Income Tax Act is amended—

Amendment of section 22C of Cap. 470

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

(4) Deposits in a registered home ownership savings plan shall be invested in accordance with prudential guidelines issued by the Central Bank or investment guidelines or regulations issued by the Capital Markets Authority;

- (b) in subsection (8), by deleting the definition of “approved institution” and substituting therefor the following new definition—

“approved institution” means a bank or financial institution registered under the Banking Act (Cap. 488), an insurance company licensed under the Insurance Act (Cap. 487), a building society registered under the Building Societies Act (Cap. 489), or a fund manager or investment bank registered under the Capital Markets Act (Cap. 485A).

**11.** Section 34 of the Income Tax Act is amended in subsection (2) by deleting paragraph (n).

Amendment of s. 34 of Cap. 470.

**12.** Section 35 of the Income Tax Act is amended in subsection (1)—

Amendment of s. 35 of Cap. 470.

- (i) by deleting paragraph (m);

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

- (n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft.

**13.** The Income Tax Act is amended by repealing section 72D.

Repeal of s. 72D of Cap. 470.

**14.** The First Schedule to the Income Tax Act is amended in Part I by inserting the following new paragraphs immediately after paragraph 56—

Amendment of the First Schedule to Cap. 470.

57. The income of the National Housing Development Fund.

58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January, 2020;

Provided that—

(a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and

(b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

**15.** The Third Schedule to the Income Tax Act is amended—

Amendment of the Third Schedule to Cap. 470.

- (a) in Head A, by deleting the words “gross emoluments” appearing in paragraph 3 and substituting therefor the words “employee’s contribution”;
- (b) in Head B—
  - (i) by inserting the following new subparagraph immediately after subparagraph 2 (k)—
    - (l) in the case of a company operating a plastics recycling plant, fifteen percent for the first five years from the year of commencement of its operations.
  - (ii) by deleting subparagraph 3(o);
  - (iii) by deleting paragraph 9 and substituting therefor the following new paragraph—
    - 9. The rate of turnover tax shall be three percent of the gross receipts of the business of a taxable person under section 12C.

**16.** The Eighth Schedule to the Income Tax Act is amended by deleting paragraph 13 and substituting therefor the following new paragraph—

Amendment of the Eighth Schedule to Cap. 470.

### 13. Exemption

No gain or loss shall be included in the computation of income under section 3 (2) (f) in the case of a transfer of property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is—

- (a) a legal or regulatory requirement;
- (b) as a result of a directive or compulsory acquisition by the government;
- (c) an internal restructuring within a group which does not involve transfer of property to a third party; or



- (d) in the public interest and approved by the Cabinet Secretary.

**PART III—VALUE ADDED TAX**

**17.** Section 2 of the Value Added Tax Act is amended—

Amendment of s.  
2 of No. 35 of  
2013.

- (a) in the definition of “supply of imported services” by deleting the words “a person who is a registered person” and substituting therefor the words “any person”.
- (b) by inserting the following new definition in proper alphabetical sequence—
- “concessional loan” means a loan with at least twenty-five percent grant element.

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

Amendment of s.  
5 of No. 35 of  
2013.

- (a) in subsection (6) by deleting the words “ a registered person” and substituting therefor the words “ any person”;
- (b) by inserting the following new subsections immediately after subsection (6)—
- (7) The provisions of subsection (1) shall be applicable to supplies made through a digital marketplace.
- (8) The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7).
- (9) For the purpose of this section, “digital marketplace” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

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

Amendment of  
section 10 of  
No.35 of 2013.

- (a) in subsection (1) by deleting the expression “a registered person” and substituting therefor the expression “any person”;
- (b) in subsection (3) by deleting the expression “a registered person” and substituting therefor the expression “any person”.

**20.** Section 12 of the Value Added Tax Act, 2013, is amended in subsection (4) by inserting the words “or a special economic zone” immediately after the words “export processing zone” appearing in paragraph (c).

Amendment of s.  
12 of No. 35 of  
2013.

**21.** The First Schedule to the Value Added Tax Act, 2013 is amended—

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

(a) in section A of Part I—

- (i) by inserting the words “upon the recommendation of the Cabinet Secretary responsible for matters relating to energy” at the end of paragraph 45;
- (ii) by inserting the words “other than road tractors for semitrailers” immediately after the word “tractor” appearing in paragraph 47;
- (iii) by inserting the following new paragraphs immediately after paragraph 104—

- 105. Locally manufactured motherboards.
- 106. Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology.
- 107. Plant, machinery and equipment used in the construction of a plastics recycling plant.
- 108. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.
- 109. Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.
- 110. Musical instruments and other musical equipment, imported or purchased

locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.

- (b) in Part II by deleting the words “stock exchange brokerage” appearing in paragraph 10 and substituting therefor the words “securities brokerage services”.

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

Amendment of  
Second Schedule  
to No. 35 of 2013.

- (a) by deleting paragraph 13B;
- (b) in paragraph 13 by inserting the words “including propane” immediately after the words “liquefied petroleum gas”.
- (c) by inserting the following new paragraph in proper sequence—

19. Agricultural pest control products.

#### **PART IV—EXCISE DUTY**

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

Amendment of s.  
2 of No. 23 of  
2015.

“betting” shall have the meaning assigned to it under the Betting, Lotteries and Gaming Act;

Cap. 131.

“bookmaker” shall have the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act;

Cap 131

“concessional loan” means a loan with at least twenty-five percent grant element;

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

**24.** Section 4 of the Excise Duty Act, 2015, is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s.  
4 of No. 23 of  
2015.

(1A) In relation to a betting transaction, the time of supply shall be the time a person wagers or

stakes money on a platform or other medium provided by a bookmaker.

**25.** The Excise Duty Act, 2015 is amended by inserting the following section immediately after section 41—

Insertion of s. 41A of No. 23 of 2015.

General penalty.

**41A.** A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is provided commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both.

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

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

(a) in paragraph 1 of Part I—

(i) by deleting the rate of excise duty in respect of the description set out in the first column hereunder and substituting therefor the new rates respectively in the second column—

<i>Description</i>	<i>Rate of Excise</i>
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,624 per kg
Electronic cigarettes	Shs. 3,787 per unit
Cartridge for use in electronic cigarettes	Shs. 2,525 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,157 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,272 per mille
Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences	Shs. 8,837 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 189 per litre

<i>Description</i>	<i>Rate of Excise</i>
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 253 per litre

(ii) by deleting the descriptions relating to motor vehicles together with the corresponding rates of excise duty and substituting therefor the following—

<i>Description</i>	<i>Rate of Excise Duty</i>
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Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding—	20%
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(i) locally assembled motor vehicles;

(ii) school buses for use by public schools;

(iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and

(iv) imported motor vehicles of cylinder capacity exceeding 1500cc

Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	25%.
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Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
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100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00	10%.
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(iii) by deleting the description “plastic shopping bags” and the corresponding rate of excise duty;

(iv) by deleting the description relating to sugar confectionary (including white chocolate) together with the corresponding rates of excise

duty, and substituting therefor the following—

<i>Description</i>	<i>Rate of Excise</i>
Imported sugar confectionary of tariff heading 17.04;	Shs. 20 per kg
Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs 200 per kg.

(v) by inserting the following new item—

<i>Description</i>	<i>Rate of Excise</i>
Imported gas cylinders	35%

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

5. Excise duty on betting shall be twenty percent of the amount wagered or staked.

(c) in Part III—

(i) by deleting the word “July” appearing in the definition of “Adjustment day” and substituting therefor the word “October”;

(ii) by deleting the expression “or an insurance premium or premium based or related commissions” in the definition of the term “other fees” and substituting therefor the expression “or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder.;

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

“amount wagered or staked” means the amount of money placed by a person for an outcome in a betting transaction.

### PART V—TAX PROCEDURES

**27.** Section 12 of the Tax Procedures Act, 2015 is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of s.  
12 of No. 29 of  
2015.

(5A) The Commissioner may, upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions specified in the First Schedule.

**28.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 37B—

Insertion of new  
section 37C in  
No. 29 of 2015.

Commissioner to refrain from recovering penalties or interest from companies that list on the growth segment.

**37C.** (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest from a company that lists on the growth segment of a securities exchange in Kenya, in respect of any year of income prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing:

Provided that the principal tax shall be paid in full.

(2) This section shall not apply in respect of any tax where the person who should have paid the tax—

- (a) has been assessed in respect of the tax or any matter relating to the tax; or
- (b) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Notwithstanding subsection (1), a company that delists from the exchange in which it is listed before the expiry of five years from the date of listing shall be

assessed for all taxes, penalties or interest for the years it was in operation prior to listing.

(4) The provisions of subsection (1) shall cease to apply after three years from the commencement of this section.

**29.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 39—

Insertion of new section 39A in No. 29 of 2015.

Penalty for failure to deduct or withhold tax.

**39A.** Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

**30.** Section 42A of the Tax Procedures Act, 2015 is amended in subsection (1)—

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

- (a) by deleting the expression “six percent” and substituting therefor the expression “two percent”;
- (b) by inserting the following proviso—

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies.

**31.** Section 45 of the Tax Procedures Act, 2015 is amended—

Amendment of s. 45 of No. 29 of 2015.

- (a) in subsection (1), by inserting the words “or tax representative” at the end of paragraph (b);
- (b) in subsection (2), by inserting the words “or tax representative” at the end of paragraph (b);
- (c) in subsection (7)—
  - (i) by inserting the words “or tax representative” at the end of paragraph (a);



(ii) by inserting the words “or tax representative” at the end of paragraph (b).

**32.** Section 51 of the Tax Procedures Act, 2015 is amended by deleting subsection (11) and substituting therefor the following new subsection—

Amendment of s. 51 of No. 29 of 2015.

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of—

- (a) the notice of objection; or
- (b) any further information the Commissioner may require from the taxpayer,

failure to which the objection shall be deemed to be allowed.

**33.** Section 83 of the Tax Procedures Act, 2015 is amended by inserting the following proviso to subsection (1)—

Amendment of s. 83 of No. 29 of 2015.

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.

**34.** Section 84 of the Tax Procedures Act, 2015 is amended in subsection (2) by deleting paragraph (b).

Amendment of s. 84 of No. 29 of 2015.

**35.** The First Schedule to the Tax Procedures Act, 2015 is amended by inserting the following new paragraphs immediately after paragraph 11—

Amendment of the First Schedule to No. 29 of 2015.

(12) Registration and renewal of membership by professional bodies and other licensing agencies.

(13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.

#### **PART VI—MISCELLANEOUS FEES AND LEVIES**

**36.** Section 2 of the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following definition in proper alphabetical sequence—

Amendment of s. 2 of No. 29 of 2016.

“concessional loan” means a loan with at least twenty-five percent grant element.

**37.** Section 7 of the Miscellaneous Fees and Levies Act, 2016 is amended—

Amendment of s.  
7 of No. 29 of  
2016.

- (a) in subsection (2) by deleting the word “two” appearing immediately after the words “rates of” and substituting therefor the words “three point five”;
- (b) by inserting the following new subsection immediately after subsection (2)—

(2A) Without prejudice to the provisions of subsection (2), the fee at a rate of one point five per cent shall be charged on the custom value of—

- (a) raw materials and intermediate products imported by approved manufacturers;
- (b) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry;
- (c) input for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

**38.** Section 8 of the Miscellaneous Fees and Levies Act, 2016 is amended by—

Amendment of s.  
8 of No. 29 of  
2016.

- (a) deleting the expression “one point five” appearing immediately after words “rate of” and substituting therefor the word “two”;
- (b) inserting the following new subsection immediately after subsection (2)—

(2A) Without prejudice to the provisions of subsection (2), the levy at a rate of one point five per cent shall be charged on the customs value of—

- (a) raw materials and intermediate products imported by manufacturers approved by

the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and

- (b) inputs for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matter relating to housing.

**39.** Section 8A of the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of s. 8A of No. 29 of 2016.

(3) The Commissioner shall refund the levy on the written application of an importer where the Commissioner is satisfied that the levy was paid in respect of illuminating kerosene that has subsequently been used by a licensed or registered manufacturer to manufacture paint, resin or shoe polish.

## PART VII—MISCELLANEOUS

**40.** The Fourth Schedule to the Privileges and Immunities Act is amended in paragraph 4 by deleting the words “importation of goods directly imported” and substituting therefor the words “goods or services imported or purchased locally”.

Amendment of Fourth Schedule to Cap. 179.

**41.** Section 2 of the Capital Markets Act is amended by deleting the words “and chief financial officers and Board of Directors of issuers of securities” appearing in paragraph (a) of the definition of “key personnel”.

Amendment of s. 2 of Cap. 485A.

**42.** Section 11 of the Capital Markets Act is amended in subsection (3) (cc) by inserting the following proviso to subparagraph (i) of subparagraph (cc)—

Amendment of s. 11 of Cap. 485A.

Provided that the financial penalties shall be recoverable summarily by the Authority as civil debts.

**43.** Section 25A of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s. 25A of Cap. 485A.

(1A) The financial penalties and recoveries set out under paragraphs (1) (a) (v) and (vii), (1) (b) (iii) and (iv), (1) (c) (ii) and (iii), (2) and (6) shall be recoverable summarily by the Authority as civil debts.

**44.** Section 34A of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s. 34A of Cap. 485A.

(1A) The financial penalties imposed under subsections (1) and (2) shall be recoverable summarily by the Authority as civil debts.

**45.** The Banking Act is amended by repealing section 33B.

Repeal of s. 33B of Cap. 488.

**46.** The Banking Act is amended in section 56 by inserting the following new sub-section immediately after sub-section (3)—

Amendment of section 56 of Cap. 488

(4) Notwithstanding the repeal of section 33B, any agreement or arrangement to borrow or lend which was made or entered into, or varied pursuant to the provisions of section 33B(now repealed), shall continue to be in force on such terms, including interest rates, and for the duration specified in the agreement or arrangement:

Provided that the interest rate chargeable under that agreement or arrangement may be varied downwards.

**47.** Section 2 of the Standards Act is amended by inserting the following new definition in the proper alphabetical sequence—

Amendment of s.2 of Cap. 496

“consolidator” means a person who assembles cargo belonging to various persons to form one consignment at the country of supply which may be declared as belonging to one importer at the port of destination and de-consolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidators warehouse.

**48.** The Standards Act is amended by inserting the following new section immediately after section 14B—

Insertion of s. 14c in Cap. 496

Registration of cargo consolidators.

**14C.** (1) The Bureau shall in consultation with the Kenya Revenue Authority vet and register all consolidators of air and sea cargo prior to importation of cargo into the country by a consolidator.

(2) A company shall be qualified to be registered as a cargo consolidator, if the company—

- (a) is tax compliant;
- (b) is a member in good standing with a recognised association for consolidators;
- (c) has a warehouse in the country of origin and country of destination;
- (d) has not committed any offence relating to importation of substandard or counterfeit goods.

(3) A company seeking to be registered as a consolidator shall apply to the Bureau in the manner prescribed by the Cabinet Secretary.

(4) A company which imports cargo as a consolidator without being registered as required under this section commits an offence and shall upon conviction be liable to a fine of not exceeding one million shillings or imprisonment for a term not exceeding one year, or to both.

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

Insertion of new s. 22 in Cap. 496

Transitional provision.

22. The provisions of section 14C(2)(d) shall not apply to any company, which was in the business of consolidation before the commencement of this Act.

**50.** Section 37 of the Retirement Benefits Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of s. 37 of No. 3 of 1997.

(4) Where scheme funds are invested in a guaranteed fund asset class, the approved issuer

shall, upon termination of the relevant agreement, transfer the funds out of the asset class within twelve months, or such other shorter period as may be specified in the instrument of appointment.

**51.** The Retirement Benefits Act is amended by repealing section 45A and replacing it with the following new section—

Repeal and replacement of s. 45A of No. 3 of 1997.

Treatment of unclaimed benefits.

**45A.** (1) If within a period of two years from the completion of winding up proceedings in respect of a scheme under the Act, the liquidator is unable to trace any member of the scheme, the accrued benefits due to such member shall become unclaimed assets within the meaning of section 13 (1) of the Unclaimed Financial Assets Act, 2011, at the end of that period.

No. 40 of 2011.

(2) At the end of the period specified in subsection (1), a trustee of the scheme may treat accrued benefits as unclaimed benefits if—

- (a) a scheme member entitled to such accrued benefits has not lodged any claim and the trustee is unable to locate that member after taking the specified steps;
- (b) a scheme member has lodged a claim with the trustee but the trustee is subsequently unable to locate that member after taking the specified steps; or
- (c) the member or beneficiary has not—
  - (i) increased or decreased the principal;
  - (ii) accepted any payment in respect of the accrued benefits;
  - (iii) communicated with the scheme concerning the accrued benefits; or

- (iv) indicated any other interest in the accrued benefits as evidenced by a record prepared by the trustees.

**52.** Section 2 of the Employment Act, 2007 is amended by—

Amendment of s. 2 of No. 11 of 2007.

- (a) deleting the definition of “employee earnings”;
- (b) inserting the following new definition in proper alphabetical sequence—

“basic salary” means an employee’s gross salary excluding allowances and other benefits.

**53.** Section 17 of the Accountants Act, 2008 is amended by repealing subsection (2A).

Amendment of s. 17 of No. 15 of 2008.

**54.** The long title to the Housing Act is amended by deleting the words “a Housing Fund” and substituting therefor the words “the National Housing Development Fund”.

Amendment of the long title to Cap. 117.

**55.** Section 2 of the Housing Act is amended—

Amendment of section 2 of Cap. 117.

- (a) in the definition of “grant” by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”; and
- (b) by deleting the definition of “Housing Fund”;
- (c) by inserting the following new definition in its proper alphabetical sequence—

“National Housing Development Fund” means the Fund established under section 6 of this Act.

**56.** The marginal note to section 7 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”.

Amendment of marginal note to section 7 of Cap. 117.

**57.** Section 7 of the Housing Act is amended—

Amendment of section 7 of Cap. 117.

- (a) by deleting the words “Housing Fund” appearing in subsection (1) and substituting therefor the words “National Housing Development Fund”;

- (b) by deleting the words “Housing Fund” wherever they appear in subsection (2) and substituting therefor the words “National Housing Development Fund”; and
- (c) by deleting the words “Housing Fund” wherever they appear in subsection (3) and substituting therefor the words “National Housing Development Fund”.

**58.** Section 8 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of subsection (1) and substituting therefor the words “National Housing Development Fund”.

Amendment of section 8 of Cap. 117.

**59.** Section 9 of the Housing Act is amended by deleting the words “Housing Fund” appearing in subsection (3) and substituting therefor the words “National Housing Development Fund”.

Amendment of section 9 of Cap. 117.

**60.** Section 14 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of paragraph (a) and substituting therefor the words “National Housing Development Fund”.

Amendment of section 14 of Cap. 117.

**61.** Section 15 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.

Amendment of section 15 of Cap. 117.

**62.** The Housing Act is amended by inserting the following new section immediately after section 28—

Insertion of new section in Cap.117.

General penalty.

**28A.** (1) A person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.

(2) Where an act or omission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to twice the amount lost.

**63.** Section 29 of the Housing Act is amended in subsection (4) by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.

Amendment of section 29 of Cap. 117.



**64.** Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (n)—

Amendment of  
section 117 of  
Cap. 480.

- (o) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.