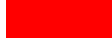


Insertion-----



THE FINANCE BILL, 2020

Deletion-----



A Bill for

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

Short title and commencement.

1. This Act may be cited as the Finance Act, 2020 and shall come into operation, or be deemed to have come into operation, as follows—

(a)

(b)

(c)

PART II—INCOME TAX ACT

Amendment of section 6A of Cap. 470.

2. Section 6A of the Income Tax Act is amended by deleting the word “ten” appearing in subsection (1) and substituting therefor the word “fifteen”.

Amendment of section 12 of Cap. 470.

3. Section 12 of the Income Tax Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) if the minimum tax payable under section 12D is higher than the instalment tax under this section.

Insertion of new sections in Cap. 470.

4. The Income Tax Act is amended by inserting the following new sections immediately after section 12C—

Minimum tax.

12D. (1) Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if—

(a) that person’s income is not exempt under this Act;

(b) that person’s income is not chargeable to tax under sections 5, 6A, or 12C, or the Eighth or Ninth Schedules; or

(c) the instalment tax payable by that person under

section 12 is higher than the minimum tax.

(2) The tax payable under this section shall be paid in instalments which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.

Digital
service tax.

12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place:

Provided that a resident person or non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.

(2) The tax payable under subsection (1) shall be due at the time of the transfer of the payment for the service to the service provider.

Amendment of
section 15 of Cap.
470.

5. Section 15 of the Income Tax Act is amended in subsection (2) by—

- (a) deleting paragraph (h);
- (b) deleting paragraph (s);
- (c) deleting paragraph (ss);
- (d) deleting paragraph (u);
- (e) deleting paragraph (v); and
- (f) deleting paragraph (x).

Repeal of section
22C of Cap. 470.

6. The Income Tax Act is amended by repealing section 22C.

Amendment of
section 34 of Cap.
470.

7. Section 34 of the Income Tax Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (m)—

(n) tax upon the gross turnover of a person chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule.

(o) tax upon the gross transaction value of services chargeable to tax under section 12E shall be charged at the rate specified in the Third Schedule.

Amendment of the First Schedule to Cap. 470.

8. The First Schedule to the Income Tax Act is amended—

(a) in Part I by—

(i) deleting paragraph 44;

(ii) deleting paragraph 45;

(iii) deleting the following paragraph 53—

53. Monthly pension granted to a person who is sixty five years of age or more.

(iv) deleting the following paragraph 53—

53. Income from employment paid in the form of bonuses, overtime and retirement benefits:

Provided that this paragraph shall only apply to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule.

Amendment of Third Schedule to Cap. 470.

9. The Third Schedule to the Income Tax Act is amended in Head B by adding the following new paragraphs immediately after paragraph 10—

11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.

12. The rate of tax in respect of digital service tax under section 12E shall be one point five per cent of the gross transaction value.

PART III—VALUE ADDED TAX ACT

Amendment of section 17 of No. 35 of 2013.

10. Section 17 of the Value Added Tax Act, 2013, is amended by deleting subsection (2) and substituting the following new subsection—

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1)—

(a) the person does not hold the documentation referred to in subsection (3), and

(b) the registered supplier has not declared the sales invoice in a return,

the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

Amendment of
First Schedule to
No. 35 of 2013.

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

(a) in Section A of Part I—

- (i) in the schedule immediately after paragraph 39 by deleting tariff numbers 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.10.00, 8805.21.00 and 8805.29.00 with their descriptions thereof;
- (ii) deleting paragraph 43;
- (iii) deleting paragraph 45;
- (iv) deleting paragraph 47;
- (v) deleting paragraph 50;
- (vi) deleting paragraph 65;
- (vii) deleting paragraph 67;
- (viii) deleting paragraph 104;
- (ix) deleting paragraph 107;
- (x) by inserting the following new paragraph immediately after paragraph 110—

111. Maize (corn) seeds of tariff no. 1005.10.00.

(b) in Part II by—

- (i) inserting the word “ambulance” immediately after the word “dental” appearing in paragraph 4;
- (ii) adding the words “excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00” at the end of paragraph 18.

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

12. The Second Schedule to the Value Added Tax Act, 2013, is amended in Part A by—

- (a) deleting paragraph 13;
- (b) deleting paragraph 13A;
- (c) deleting paragraph 18.

PART IV—EXCISE DUTY ACT

Amendment of section 2 of No. 23 of 2015.

13. Section 2 of the Excise Duty Act, 2015, is amended by deleting the definition of “licence” and substituting therefor the following new definition—

“licence” means—

- (a) in the case of excisable services, the certificate of registration;
- (b) in the case of excisable goods, the licence issued under section 17; or
- (c) in the case of any activity under section 15 (1) (e), the licence required thereunder.

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

14. The First Schedule to the Excise Duty Act, 2015, is amended in paragraph 1 of Part I by—

- (a) deleting the word “imported” appearing in the description relating to “sugar confectionery of tariff heading 17.04”;
- (b) deleting the word “imported” appearing in the description relating to “white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00”;
- (c) deleting the expression “10%” appearing in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%” and substituting therefor the expression “8%”;
- (d) by deleting the expression “10%” appearing in the description “Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%” and substituting therefor the expression “8%”.

PART V—TAX PROCEDURES ACT

Insertion of a new section in No. 29 of 2015.

15. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 37C—

Voluntary Tax
Disclosure
Programme.

37D. (1) There is established a programme to be known as the Voluntary Tax Disclosure Programme which shall be for a period of three years with effect from the 1st January, 2021.

(2) For purpose of this section, “voluntary tax disclosure programme” means a programme where a taxpayer discloses the taxpayer’s tax liabilities to the Commissioner for the purpose of being granted a relief of penalties and interest on the tax disclosed.

(3) A person with a tax liability may apply to the Commissioner for relief in the prescribed form with respect to tax liabilities that accrued within a period of five years prior to the 1st July, 2020.

(4) A taxpayer granted relief under this section—

(a) shall not be prosecuted with respect to the tax liability disclosed under this section; and

(b) shall be granted a remission of the interest and penalty due on the tax liability as follows –

(i) where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty;

(ii) where the disclosure is made and tax liability paid in the second year of the programme, remission of fifty per cent of the interest and penalty; and

(iii) where the disclosure is made and tax liability paid final year of the programme, remission of twenty-five per cent of the interest and penalty.

(5) An application under subsection (3) shall be voluntary and disclose all material facts.

(6) Where the Commissioner is satisfied with the facts disclosed in the application under subsection (3), the Commissioner shall grant the relief applied for:

Provided that the relief shall not result in the payment of a refund to the taxpayer.

(7) Where the Commissioner has granted the relief, the Commissioner shall enter into an agreement with the taxpayer setting out the terms of payment of the tax liability and the period within which the payment shall be made which shall not exceed one year from the date of the agreement.

(8) Where a taxpayer fails to meet the terms under subsection (6), that taxpayer shall be liable to pay the full interest and penalty that had been remitted under the agreement.

(9) A taxpayer granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.

(10) Where, before the expiry of the agreement between the Commissioner and the taxpayer, the Commissioner establishes that the taxpayer failed to disclose a material fact in respect of the relief granted under this section, the Commissioner may—

- (a) withdraw any relief granted;
- (b) assess and collect any balance of the tax liability; or
- (c) commence prosecution under section 80.

(11) A taxpayer may appeal against a decision of the Commissioner under subsection (10).

(12) This section shall not apply to a taxpayer if the taxpayer—

- (a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
- (b) has been notified of a pending audit or investigation by the Commissioner.

(13) The disclosure of a tax liability under this section shall be confidential.

Insertion of a new section in No. 29 of 2015.

16. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 42A—

Appointment of digital service tax agent.

42B. (1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.

(2) The Commissioner may revoke an appointment under subsection (1).

PART VI—MISCELLANEOUS FEES AND LEVIES ACT

Amendment of section 7 of No. 29 of 2016.

17. Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended in subsection (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at a rate of one point five per cent of the customs value.

Insertion of a new section in No. 29 of 2016.

18. The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 9—

Duty on goods for home use from an export processing zone enterprise.

9A. Notwithstanding the import duties payable under section 110 of the East African Community Customs Management Act, 2004, an additional duty at a rate of two point five per cent of the customs value shall be payable in respect of goods entered for home use from an export processing zones enterprises.

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

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

(a) in Part A by—

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

(xv) aircraft excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00.

(ii) deleting paragraph (xxii);

(iii) deleting paragraph (xxiii).

(iv) by inserting the following new paragraph immediately after paragraph (xxiv) —

(xxiv) all goods, including materials supplies,

equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police.

- (b) in Part B—
 - (i) deleting paragraph (vi);
 - (ii) by adding the following new paragraph immediately after paragraph (vii)—
 - (viii) currency notes and coins imported by the Central Bank of Kenya.

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

(viii) all goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police.

PART VII—TAX APPEALS TRIBUNAL

Amendment of section 13 of No. 40 of 2013.

20. Section 13 of the Tax Appeals Tribunal Act 2013, is amended in subsection (6) by inserting the words “or documents” immediately after the word “appeal”.

PART VIII—MISCELLANEOUS

Amendment of section 2 of Cap. 407.

21. The Public Roads Toll Act is amended in Section 2—

- (a) in the definition of the term “toll collector” by inserting the words “private or public” immediately before the word “toll”;
- (b) by inserting the following new definitions in their proper alphabetical sequence—

“base toll rate” means the unit rate prescribed by the Minister under section 4A for the calculation of applicable tolls;

“Fund” means the National Roads Toll Fund established under section 6A; and

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to roads.

Amendment of section 3 of Cap. 407.

22. The Public Roads Toll Act is amended in section 3—

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

(2) The stations specified in the first column of the First Schedule are declared to be transit toll stations for the public roads respectively set out in the second column.

- (b) by deleting subsection 5 and substituting therefor the following new subsection—

(5) The toll in respect of every car approaching and proceeding through a toll station shall be paid to the toll collector in such manner as may be prescribed by the Minister.

Amendment of section 4 of Cap. 407.

23. The Public Roads Toll Act is amended in section 4—

- (a) in subsection (1) by inserting the words “or a road authority” immediately after the word “Minister”;

- (b) in subsection (1) by inserting the words “or a road authority” immediately after the word “Minister”.

Amendment of section 4A of Cap. 407.

24. The Public Roads Toll Act is amended in section 4A—

- (a) by deleting subsection (3);

- (b) by deleting subsection (4);

- (c) by deleting subsection (5).

Amendment of section 4B of Cap. 407.

25. The Public Roads Toll Act is amended in section 4B by—

- (a) by inserting the following proviso immediately after subsection (1)—

Provided that the agreement may prescribe alternative arrangements for the levying, collection and administration of tolls and management of toll infrastructure.

- (b) by inserting the following proviso immediately after subsection (2)—

Provided that the Minister may prescribe the base toll rate in the agreement and permit the person referred to in subsection (1) to adjust, vary or otherwise revise the toll in accordance with an adjustment mechanism provided in the agreement.

Insertion of new section on Cap. 407.

26. The Public Roads Toll Act is amended by inserting the following new section immediately after section 6—

Establishment of Fund.

No.18 of 2012.

6A. (1) The Minister responsible for the National Treasury shall establish a Fund to be known as the National Roads Toll Fund under the Public Finance Management Act, 2012.

(2) All tolls collected by the persons appointed under section 4 shall be remitted to the Fund.

(3) The Fund shall be administered in accordance with section 24 of the Public Finance Management Act, 2012, and regulations made under that Act.

Amendment of section 8 of Cap. 407.

27. The Public Roads Toll Act is amended in section 8 by inserting the following new subsection immediately after subsection (2)—

(3) Notwithstanding subsections (1) and (2), the person with whom the Minister enters into an agreement under section 4A may collect the unpaid tolls from defaulters as a civil debt recoverable summarily.

Amendment of section 11 of Cap. 485A.

28. Section 11 of the Capital Markets Act is amended in subsection (3) by adding the following new paragraph immediately after paragraph (g)—

(h) license, approve and regulate private equity and venture capital companies that have access to public funds.

Amendment of section 18 of Cap. 485A.

29. Section 18 of the Capital Markets Act is amended in subsection (1) by deleting the words “and paying beneficiaries from collected unclaimed dividends when they resurface”.

Amendment of section 204A of Cap. 487

30. Section 204A of the Insurance Act, is amended in subsection (3) by inserting the expression “, within 30 days,” immediately after the word “may”

Amendment of section 2 of Cap. 496.

31. Section 2 of the Standards Act is amended by deleting the definition of “consolidator” and substituting therefor the following new definition—

"consolidator" means a firm that is licensed to consolidate goods belonging to different consignees at the country of export, which shall be under one Master Bill of Lading or Master Airway Bill, and breaks the consignment into smaller consignments at the port of destination for the different consignees for the purpose of individual customs declaration.

Amendment of

32. Section 7 of the Road Maintenance Levy Fund Act, 1993, is

section 7 of No. 9
of 1993. amended—

- (a) by deleting the words “and transit tolls levied under the Public Roads Toll Act” appearing in subsection (2); and
- (b) by deleting the words “and transit tolls” appearing in subsection (3).

Amendment of
section 5 of No. 2
of 1995.

33. Section 5 of the Kenya Revenue Authority Act, 1995, is amended by inserting the following new subsection immediately after subsection (2)—

(2A) The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions.

Amendment of
section 16 of No. 2
of 1995.

34. Section 16 of the Kenya Revenue Authority Act, 1995, is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

(ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency:

Provided that such a commission shall not exceed two per cent of the total revenue collected on behalf of the county government or government agency.

Insertion of a new
section 20A in No.
2 of 1995.

35. The Kenya Revenue Authority Act, 1995, is amended by inserting the following new section immediately after section 20—

Limitation
of actions.

20A. A legal action against the Authority shall not be instituted unless—

- (a) it is commenced within twelve months after the act, neglect or default complained of;
- (b) in the case of continuing injury or damage, within six months after the cessation of the act; and
- (c) at least one month written notice specifying the particulars of the claim and intention to commence the action or legal proceeding has been served upon the Commissioner-General.

Amendment of
section 21 of No. 2
of 1995.

36. Section 21 of the Kenya Revenue Authority Act, 1995, is amended by adding the following new paragraph immediately after paragraph (e)—

(f) with respect to capacity building and training.

Amendment of
section 35 of No. 3
of 1997.

37. Section 35 of the Retirement Benefits Act, 1997, is amended by—

(a) renumbering section 35 as section 35 (1); and

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

(2) A trustee who fails to submit a copy of the actuarial report to the Chief Executive Officer by the due date specified in the regulations shall pay a penalty of one hundred thousand shillings.

(3) Where the report remains unsubmitted, the trustee, in addition to the penalty specified under subsection (2), shall pay a further penalty of one thousand shillings for each day or part thereof during which the report remains unsubmitted.

Amendment of
Second Schedule
to No. 18 of 2015.

38. The Second Schedule to the Insolvency Act, 2015, is amended in paragraph 3 (1) by adding the following new item immediately after item (g)—

(h) all amounts that are held on behalf of the Kenya Revenue Authority by a person registered under the Banking Act who has been appointed as an agent for revenue banking services by the Commissioner at the point of receivership or liquidation of the bank or institution.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2020/2021 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

The Roads Tolls Act (Cap. 407)

The Bill proposes to amend the Act to enable the persons, who enter into agreement with the Cabinet Secretary responsible for roads, collect road tolls on roads constructed and managed under such agreements. The amendment also proposes creation of a Fund by the Cabinet Secretary for the National Treasury in which the funds collected shall be deposited into.

The Capital Markets Act (Cap. 485A)

The Bill seeks to amend section 11 (3) of the Act to bring private equity and venture capital firms that access public funds (pensions scheme funds) under the regulatory oversight of the Capital Markets Authority in line with the Cabinet Secretary's policy pronouncement and intention in the financial year 2015/16 budget speech. The Bill further seeks to amend section 18 of the Act to ~~remove the function of payment of beneficiaries from collected unclaimed dividends when the resurface since this is a function currently domiciled under the Unclaimed Financial Assets Authority. to expand the application of the Investor Compensation Fund (ICF) to activities such as whistle blowing, forensic audits and other related activities that are proactive in nature as far as protection is concerned.~~

The Standards Act (Cap. 496)

The Bill proposes to amend the definition of “consolidator” in section 2 of the Act to facilitate visibility of individual consignees for the purpose of customs declaration.

The Kenya Revenue Authority Act (No. 2 of 1995)

The Bill seeks to amend the Act to provide for a legal framework for the establishment of an institution to offer capacity building and training on tax, customs and revenue administration. The Bill further proposes to amend the Act to include commissions earned by the Kenya Revenue Authority on collections made on behalf of government agencies or county governments as a source of funding for the Authority capped at 2% of the revenue collected. The Bill also seeks to amend the Act by providing for specific timelines within which the Authority can be sued to enable the Authority to effectively manage its disputes.

The Retirement Benefits Act, 1997(No. 3 of 1997)

The Bill, seeks to amend the Retirement Benefits Act, 1997 to enhance supervisory role of the Authority on pension schemes by providing powers to charge a penalty for failure to submit actuarial valuation reports within the period specified in the Regulations.

The Insolvency Act (No. 18 of 2015)

The Bill proposes to amend the Second Schedule to the Act to reduce the risk exposure on the tax revenues held by commercial banks before transfer to Central Bank by declaring them preferential claims in the order of priority in the event of insolvency.

Dated the 30th April, 2020

Joseph K. Limo
*Chairperson of the Departmental Committee
on Finance and National Planning*

Section 2 of Cap. 407 which is intended to amended —

2. Interpretation

In this Act, unless the context otherwise requires—

“**toll collector**” means a toll collector appointed under section 4

Section 3 of Cap. 407 which is intended to amended —

3. Toll stations, etc.

(2) The public roads set out in the First Schedule are declared to be toll roads for the purposes of this Act.

(5) Every vehicle approaching and proceeding through a toll station shall be stopped at the toll station and the toll in respect of that vehicle shall be paid to the toll collector or in such other manner as may be prescribed by the Minister.

Section 4 of Cap. 407 which is intended to amended —

4. Appointment of toll collectors

(1) The Minister shall appoint toll collectors who shall collect tolls at toll stations and perform such other duties as may be prescribed by the Minister for the purpose of this Act.

(2) Every toll station shall have a station manager appointed by the Minister.

Section 4A of Cap. 407 which is intended to amended —

4A. Agreements for road management

(3) A proposed agreement for the purpose of this section shall be laid before the National Assembly for approval prior to signature.

(4) The tolling regime provided for in an agreement to be entered into by the Minister or a roads agency designated by the Minister, shall be laid before the National Assembly for approval prior to the Minister or roads Authority designated by the Minister signing such agreement.

(5) Any agreement entered into by the Minister or a roads agency pursuant to subsection (1) without the approval of the National Assembly shall be null and void.

Section 4B of Cap. 407 which is intended to amended —

4B. Levying of tolls pursuant to agreement

(1) A person with whom the Minister or a roads agency enters into an agreement pursuant to section 4A shall be entitled to levy toll, and collect monies payable as toll on such toll road, or portion thereof, for his or her own account during the said period, and may for that purpose erect a toll station or toll stations and facilities in connection therewith, including permanent and movable weighbridges, on the toll road or portion of thereof.

(2) The person referred to in subsection (1) shall only be entitled to levy toll in accordance with the agreement with the Minister or the roads agency and the amount of such toll shall be subject to approval by the Minister.

Section 11 (3) of Cap. 485A which is intended to amend—

11. Objectives of the Authority

(3) For the purpose of carrying out its objectives, the Authority may exercise, perform or discharge all or any of the following powers, duties and functions—

(a) advise the Minister on all aspects of the development and operation of capital markets;

(b) implement policies and programmes of the Government with respect to the capital markets;

(c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;

(cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—

(i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed;

(ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;

(iii) publishing findings of malfeasance by any person;

(iv) suspending or cancelling the listing of any securities or exchange-traded derivatives contracts, or the trading of any securities or exchange-traded derivatives contracts, for the protection of investors;

(d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;

(e) to grant a licence to any person to operate as a stockbroker, derivatives broker, dealer or investment adviser, fund manager, investment bank, central depository or authorised securities dealer, and ensure the proper conduct of that business;

(f) to grant approval to any person to operate as a securities exchange, derivatives exchange, credit rating agency, registered venture capital company or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business;

(fa) regulate spot commodity markets;

(ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;

(g) register, approve and regulate collective investment schemes;

(h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;

(i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;

(j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;

(k) deleted by Act No. 9 of 2007, s. 46 (b);

(l) deleted by Act No. 9 of 2007, s. 46 (b);

(m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;

(n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;

(o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;

(p) act as an appellate body in respect of appeals against any self regulatory organization securities or exchange-traded derivatives contracts exchange, derivatives exchange or central depository in actions by parties aggrieved thereby;

(q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;

(r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;

(s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;

(t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in an issuer and its securities or insider trading;

(u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank accounts as may be directed by the Authority, pending determination of any charges instituted against that person;

(v) prescribe notices or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;

(w) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or the exercise of its powers under this Act.

Section 18 (1) of Cap. 485A which is intended to amend—

18. Establishment of the Investor Compensation Fund

(1) There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface.

Section 2 of Cap. 496 which is intended to amend—

"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 deconsolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidators warehouse;

Section 16 (1) of No. 2 of 1995 which is intended to amend—

16. Funds of the Authority

(1) The funds of the Authority shall consist of—

- (a) one and such amount, not exceeding two percent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act as may be determined by the Minister in each financial year;
- (b) three percent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected in respect of that period;
- (c) loans and grants received by the Authority with the approval of the Minister; and
- (d) any other monies as may, with the approval of the Minister, be received by or made available to the Authority for the purpose of performing its functions.

Section 21 of No. 2 of 1995 which is intended to amend—

21. Regulations

The Board may make regulations for the carrying into effect the provisions of this Act, and in particular but without prejudice to the foregoing make regulations—

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) prescribing the code of conduct and discipline;
- (d) respecting the administration and management of the funds of the Authority;
- (e) respecting the performance targets of the Authority.

Section 35 of No. 3 of 1997 which is intended to amended —

35. Actuarial evaluations

The Board may require the trustees of such schemes or categories of schemes as it may specify, to cause the schemes to be evaluated by an actuary appointed by the trustees with the approval of the Board and to present the actuarial report to the Chief Executive Officer at such regular intervals as the Board may specify.

Paragraph 3 (1) of the Second Schedule to No. 18 of 2015 which is intended to amended—

3. Second priority claims

(1) After the claims referred to in paragraph 2 have been paid, claims in respect of the following debts have second priority to the extent that they remain unpaid:

(a) all wages or salaries payable to employees in respect of services provided to the bankrupt or company during the four months before the commencement of the bankruptcy or liquidation;

(b) any holiday pay payable to employees on the termination of their employment before, or because of, the commencement of the bankruptcy or liquidation;

(c) any compensation for redundancy owed to employees that accrues before, or because of, the commencement of the bankruptcy or liquidation;

(d) amounts deducted by the bankrupt or company from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act (Cap. 470));

(e) any reimbursement or payment provided for, or ordered by the Industrial Court under the Labour Institutions Act, 2007 (No. 12 of 2007) to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, 2007 (No. 14 of 2007) respect of wages or other money or remuneration lost during the four months before the commencement of the bankruptcy or liquidation;

(f) amounts that are preferential claims under section 175(2) and (3);

(g) all amounts that are by any other written law required to be paid in accordance with the priority established by this subparagraph paid by the buyer to a seller on account of the purchase price of goods.