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SENATE BILLS, 2024

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Bill for Introduction into the Senate—

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The Business Laws (Amendment) Bill, 2024 977

THE BUSINESS LAWS (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to various laws; and for connected purposes.

ENACTED by the Parliament of Kenya as follows —

1. This Act may be cited as the Business Laws (Amendment) Act, 2024

Short title.

2. The Investment Promotion Act is amended by deleting the heading “PART II—INVESTMENT CERTIFICATES—APPLICATION AND ISSUE, ETC” appearing immediately after section 2 and substituting therefor the following new heading—

Amendment of the heading of Part II of Cap. 485.

“PART II—REGISTRATION OF FOREIGN DIRECT INVESTMENTS AND ACCREDITATION OF FACILITATORS FOR FOREIGN INVESTORS”

3. The Investment Promotion Act is amended by repealing section 3 and replacing it with the following new section—

Repeal and replacement of section 3 of Cap. 485

Accreditation of facilitators for foreign investors.

3. (1) A person who seeks to engage in the business of facilitating foreign direct investors shall be accredited by the Authority.

(2) The Cabinet Secretary may prescribe the requirements and procedure for accreditation of facilitators for foreign investors under subsection (1).

(3) An application for accreditation under this section shall be accompanied by a non-refundable application fee as may be prescribed in regulations.

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

4. The Investment Promotion Act is amended by repealing section 4 and replacing it with the following new section—

Repeal and replacement section 4 of Cap. 485

Registration of foreign direct investments.

4. (1) Every foreign direct investment in Kenya shall be registered with the Authority before engaging in such investment.

(2) A foreign direct investor or his accredited facilitator shall apply for registration of a foreign direct investment in the prescribed form.

(3) The Authority may request clarifications and additional information for purposes of registration.

(4) The Cabinet Secretary may prescribe, in regulations, the requirements for registration of foreign direct investments.

5. The Investment Promotion Act is amended by repealing section 6 and replacing it with the following new section—

Repeal and replacement of section 6 of Cap. 485

Issue of investment certificate.

6. (1) The Authority shall upon receipt and review of an application, issue a foreign direct investor with an investment certificate in the name of the entity established by the applicant, if—

- (a) the application is complete and satisfies the applicable requirements prescribed under this Act;
- (b) the amount invested by a foreign investor meets the sector or industry threshold as may be determined by the Board by notice in the *Gazette*; and
- (c) the investment and the activity related to the investment are lawful and beneficial to Kenya.

(2) In determining whether an investment and any activity related to the investment are beneficial to Kenya for the purposes of subsection (1)(c), the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraphs (a), (b) and (c), and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h)—

- (a) creation of employment for Kenyans;

- (b) acquisition of new skills or modern compatible state of the art technology for Kenyans;
- (c) contribution to tax revenues or other Government revenues;
- (d) transfer of technology to Kenya;
- (e) an increase in foreign exchange, either through exports or import substitution;
- (f) utilization of domestic raw materials, supplies and services;
- (g) adoption of value addition in the processing of local, natural and agricultural resources;
- (h) utilization, promotion, development and implementation of information and communication technology; and
- (i) any other factors that the Authority considers beneficial to Kenya.

6. The Investment Promotion Act is amended by repealing section 8 and replacing it with the following new section—

Repeal and replacement of section 8 of Cap. 485

Transfer of an Investment certificate.

8. An investment certificate once issued shall not be transferable to another person.

7. The Investment Promotion Act is amended by inserting the following new sections immediately after section 11—

Insertion of new sections 11A and 11B in Cap. 485

Maintenance of register.

11A. The Authority shall maintain a register of—

- (a) all investments registered by the Authority and nature of such investments;
- (b) all applications for investment certificates;
- (c) all issued investment certificates for new, expanded, restructured, rehabilitated or improved business

enterprises; and

- (d) all amendments or revocations of investment certificate; and
- (e) such other particulars relating to the investment certificate as may be necessary or desirable to be recorded.

Provision of government services at a centralized facility.

11B. (1) In promoting and facilitating investment in Kenya, the Authority shall establish and operationalize a centralized facility, both physical and digital, for purposes of providing Government services and regulatory requirements for investors.

- (a) registration of businesses;
- (b) tax and customs administration;
- (c) immigration work permits and visas;
- (d) labour compliance obligations;
- (e) environmental conservation and management;
- (f) land administration;
- (g) development control and enforcement;
- (h) business permit and licensing services including the relevant approvals by a county government;
- (i) connection to business utilities;
- (j) construction approvals;
- (k) import and export approvals;
- (l) standardization and conformity assessment;
- (m) admission to incentivized economic zones;
- (n) healthcare approval;
- (o) agricultural, production and value addition;

- (p) digital economy approvals; and
- (q) any other service that the Board may consider necessary.

(3) Any agency stationed at the centralized facility shall provide services to investors in accordance with its functions and mandate.

8. The Investment Promotion Act is amended in subsection 13—

Amendment of Section 13 of Cap. 485

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

(1) The holder of an investment certificate will be entitled to the following entry permits under the Kenya Citizenship and Immigration Act (Cap. 170)—

(a) six class G work permits for shareholders and partners; and

(b) six class D work permits for management and technical staff.

(b) by adding the following new subsection immediately after subsection (13)—

(13) The Authority shall facilitate in Fast tracking the incentives and exemptions.

9. The Investment Promotion Act is amended by inserting the following new section immediately after section 15—

Insertion of new section 15A of Cap. 485

Collaboration with other public institutions.

15A. Every ministry, department, agency county government or any other public institution shall collaborate with the Authority in the performance of its functions under this Act.

10. The Employment Act is amended in section 2 by—

Amendment of section 2 of Cap. 226

(a) deleting the definition of the word “employee” and substituting therefor the following new definition—

‘employee’ means a person who is employed for

wages or a salary and includes an apprentice, indentured learner and a person who performs his duties remotely or on-site within a business process outsourcing arrangement or an information technology enabled service;

- (b) deleting the definition of the word “employer” and substituting therefor the following new definition—

“employer” means a person who has entered into a contract of service to employ any individual, whether remotely or on site, and includes an agent, foreman or manager of that person;

- (c) inserting the following new definition in the proper alphabetical sequence—

“Business Process Outsourcing” means the act of transferring the recurring internal activities and decision rights of an organization to a third-party service provider as set out in a contract.

11. The Employment Act is amended by inserting the following new section immediately after section 5—

Insertion of a new section 5A in Cap. 226

Obligations of Business Process Outsourcing companies and providers of information technology enabled services.

5A. An employer who operates as a Business Process Outsourcing company or who is a provider of Information Technology Enabled Service shall—

- (a) ensure that an employee working remotely or on the employer’s site is provided with the necessary tools, equipment and resources to effectively perform his duties, whether or not those tools, equipment or resources are owned by a third beneficiary of the services of the employee; and
- (b) be responsible for any claim raised by an employee in relation to the contract of service and shall not, in its defence to such claim, assert that it was not in fact the beneficiary of the services of the employee.

12. The Occupational Safety and Health Act is amended in section 2 by—

Amendment of section 2 of Cap. 236A

- (a) deleting the definition of the word “employee” and substituting therefor the following new definition—

“employee” means a person who is employed for wages or a salary and includes an apprentice, indentured learner and a person who performs his duties remotely or on-site within a business process outsourcing arrangement or an information technology enabled service;

- (b) deleting the definition of the word “workplace” and substituting therefor the following new definition—

“workplace” includes, any land, premises, on site or remote location, vessel or thing, at, in, upon, or near which, a worker is in the course of employment;

- (c) inserting the following new definition in the proper alphabetical sequence—

“employer” means a person who has entered into a contract of service to employ any individual, whether remotely or on site, and includes an agent, foreman or manager of that person;

13. The Affordable Housing Act is amended in section 2 by—

Amendment of section 2 of No. 2 of 2024

- (a) deleting the definition of “affordable housing scheme” and substituting therefor the following new definition—

“affordable housing scheme” means the construction of affordable housing units including the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme;

- (b) inserting the following new definitions in the proper alphabetical order—

“social, physical and urban infrastructure” means social or physical amenities, infrastructure or services necessary for social welfare and the functioning and well-being of people;

“administration fee” means any payment made in relation to a *sharia* compliant facility for the purchase of an affordable housing unit;

14. Section 90 of the Land Act is amended—

Amendment of section 90 of Cap. 280.

- (a) in subsection (2) by inserting the following proviso at the end of paragraph (b)—

Provided that for purposes of affordable housing the timeline specified in this paragraph shall be forty-five days.

- (b) in subsection (3) by inserting the following proviso at the end of paragraph (e)—

Provided that for purposes of affordable housing the timeline specified in this subsection shall be forty-five days.

15. Section 96 of the Land Act is amended in by inserting the following proviso at the end of subsection (2)

Amendment of section 90 of Cap. 280.

Provided that for purposes of affordable housing the timeline specified in this paragraph shall be twenty days.

16. Section 2 of the Anti-Counterfeit Act is amended—

Amendment of section 2 of Cap. 510.

- (a) in the definition of “Cabinet Secretary” by deleting the word “industrialization” and substituting therefor the word “anti-counterfeit”

- (b) in the definition of “consumer” by deleting the word “owner” and substituting therefor the word “holder”

- (c) by deleting the definition of “counterfeiting” substituting therefor the following new definition—

“counterfeiting” means taking the following actions without the authority of the holder of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods—

- (a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya or elsewhere, of any goods whereby

those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;

- (b) the manufacture, production or making, whether in Kenya or elsewhere, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said holder or any goods manufactured, produced or made under his licence;
- (c) the manufacturing, producing or making of copies, whether in Kenya or elsewhere, in violation of an author's rights or related rights;
- (d) in relation to medicine, the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging;
- (d) in the definition of "counterfeit goods depot" by inserting the expression "or deemed as such under section 25(1)(c)" immediately after the expression "section 29"
- (e) in the definition of "protected goods" by deleting the word "owner" and substituting therefor the word "holder"
- (f) inserting the following new definitions in the proper alphabetical sequence—

"disposal" means alienation, donation, conversion and destruction by any means or alienation by way of donation of seized or counterfeit goods depending on their nature effect on public health, and natural resources

"raw material" means any item that is used as an ingredient in the manufacture, production, packaging, repackaging, labelling or making of goods;

“unbranded goods” means goods that do not bear, embody or incorporate any intellectual property right;

17. The Anti-Counterfeit Act is amended in section 6 (1) by —

Amendment of section 6 of Cap. 510.

- (a) deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) the Principal Secretary responsible for matters relating to anti-counterfeit or his or her representative;
- (b) deleting paragraph (e) and substituting therefor the following new paragraph—
 - (e) the Principal Secretary responsible for matters relating to internal security or his or her representative;
- (c) deleting paragraph (f) and substituting therefor the following new paragraph—
 - (f) the Principal Secretary responsible for matters relating to Information Communication and Technology or his or her representative;
- (d) inserting the following new paragraph immediately after paragraph (f)—
 - (fa) the Principal Secretary responsible for matters relating to micro and small enterprises development or his or her representative;

18. The Anti-Counterfeit Act is amended in paragraph (a) of section 7 by deleting the expression “with approval of the Cabinet Secretary” and substituting therefor the expression “and approve”.

Amendment of section 7 of Cap. 510.

19. Section 23 (1) of the Anti-Counterfeit Act is amended—

Amendment of section 23 of Cap. 510.

- (a) in paragraph (a) by deleting the word “destruction” and substituting therefor the word “disposal”;
- (b) by deleting paragraph (d) and substituting therefor the following new paragraph—
- (d) seize, detain and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or any

exclusive mark or any work which is the subject matter of copyright on such goods;

20. Section 27 (1) of the Anti-Counterfeit Act is amended deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 27 of Cap. 510.

(a) is ordered by a court to return, release, or otherwise dispose of those goods as specified in the order:

Provided that in the case of counterfeit goods, such goods shall be disposed based on the environmental considerations and the capacity of the country to dispose of the goods, or shall be reshipped;

21. Section 28 of the Anti-Counterfeit Act is amended—

Amendment of section 27 of Cap. 510.

(a) in subsection (2) by deleting the word “destruction” and substituting therefor the word “disposal”.

(b) in subsection (3) by deleting the word “destruction” and substituting therefor the word “disposal”.

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

(4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to court to have the counterfeit goods forfeited to the State for disposal.

(d) by inserting the following new subsection immediately after subsection (4)—

(5) Despite subsection (4), an inspector may apply to court to have any other seized goods forfeited to the State for disposal where such goods have not been claimed or where such goods are abandoned.

22. Section 34B of the Anti-Counterfeit Act is amended by—

Amendment of section 34B of Cap. 510.

(a) deleting the marginal note and substituting therefore with the following new marginal note—

“Recordation of intellectual property rights”

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

(4) The Authority shall have the power to seize and dispose of any goods originally imported into Kenya but found within Kenya that do not bear the anti-counterfeit security device.

23. Section 35 of the Anti-Counterfeit Act is amended by inserting the following new sub section after subsection (2)—

Amendment of section 35 of Cap. 510.

(2A) Any person who is convicted of an offence under section 32(h) to section 32(n), shall, on conviction, be liable to a fine not exceeding two million shillings or imprisonment for a term not exceeding three years, or both.

24. The Schedule to the Anti-Counterfeit Act is amended—

Amendment of the Schedule to Cap. 510.

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

2. Any member of the Board, other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and condition as may be specified in the instrument of appointment, but shall be eligible for reappointment for one further and final term of three years.

(b) in paragraph 3 (4) by deleting the word “seven” and substituting therefor the expression “two thirds of the”

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The purpose of the Bill is to amend various statutes so as to create a conducive environment for doing business. Some of the statutes that the Bill amends are Investment Promotions Act, Employment Act, Land Act, Anti-counterfeit Act, Affordable Housing Act and Occupational and Safety Health Act.

The Bill amends a number of sections in the Investment Promotion Act beginning with section 3 which seeks to provide for accreditation of facilitators for foreign investors. The Act is also amended in section 4 to provide requirements for registration of foreign direct investment. Further, the Bill seeks to amend section 6 of the Act by introducing a new section which provides for the issuance of investment certificate as well as setting out conditions for determining whether an investment and any related activities are beneficial to Kenya.

The Bill requires the Investment Promotion Authority to provide government services at a centralised facility. In addition, agencies stationed at the centralized facility are required to provide services to investors in accordance with their functions and mandate. Further, the Bill seeks to increase the number of permits that will be issued to foreign direct investors and facilitators for foreign investors who apply for an investment certificate, this is by amending section 13 of the Investments Promotion Act. It is important to note that every ministry, department, agency and county government are required to collaborate with the Authority in the performance of its functions under this Act.

The Bill also seeks to amend the Employment Act to redefine key words that have been used in the Bill such as employee, employer and business process outsourcing. The Bill sets out obligations of business process outsourcing companies and providers of information technology services.

The Occupational Safety and Health Act is amended in section 2 by redefining the word employee, employer and workplace so as to provide for recognition of remote locations as workplaces. The Bill also amends the Affordable Housing Act in section 2 by redefining affordable housing scheme and introduces new definitions of the words administration fee and social, physical and urban infrastructure.

Under the Bill, the Land Act is amended in section 90 by reducing the timelines given to a chargee to forty days when dealing with affordable housing. Further, section 96 of the Land Act is also amended to by introducing a new subsection which requires a chargee before exercising

the power of sale to take twenty days while seeking to sale property that is under the Affordable Housing Act.

The Bill also seeks to amend the Anti-Counterfeit Act by introducing new definitions such as counterfeiting, disposal, raw material and unbranded goods. The composition of the Board under section 6 is amended by introducing principal secretaries of various ministries under the Act. Further, section 27(1) of the Act is amended to provide a requirement for the disposal of counterfeit goods to be done through a court order. The Bill seeks to amend section 35 of the Act to provide for a fine of two million shillings or to imprisonment for a term not exceeding three years or to both for a person convicted of the offence of dealing in counterfeit goods. Further, the schedule to the Act is amended to provide for a fixed term for the members of the Board and also to specify the quorum needed for meetings of the Board.

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 whether the Bill concerns county governments

The Bill contains provisions concerning county governments within the meaning of Article 110 of the Constitution and the Fourth Schedule to the Constitution and is therefore a Bill concerning county governments.

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

The Bill may occasion additional expenditure of public funds and is therefore a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th November, 2024.

AARON CHERUIYOT,
Leader of Majority Party.

Section 3 of Cap. 485 which it is proposed to amend—

3. Applications

(1) A local investor may apply to the Authority for an investment certificate.

(2) A foreign investor who intends to invest in Kenya may apply to the Authority for an investment certificate.

(3) An application for an investment certificate shall be in the prescribed form.

(4) The Authority may request clarifications and additional information.

Section 4 of Cap. 485 which it is proposed to amend—

4. Entitlement to certificate

(1) An applicant shall be entitled to an investment certificate if—

- (a) the application is complete and satisfies the applicable requirements under this Act;
- (b) the amount to be invested by a foreign investor is at least one hundred thousand United States of America dollars or the equivalent in any currency;
- (c) the amount to be invested by a local investor is at least one million shillings or the equivalent in another currency; and
- (d) the investment and the activity related to the investment are lawful and beneficial to Kenya.

(2) In determining whether an investment and the activity related to the investment are beneficial to Kenya for the purposes of subsection (1)(d), the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraphs (a), (b) and (c), and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h)—

- (a) creation of employment for Kenyans;
- (b) acquisition of new skills or technology for Kenyans;
- (c) contribution to tax revenues or other Government revenues;
- (d) a transfer of technology to Kenya;
- (e) an increase in foreign exchange, either through exports or import substitution;

- (f) utilization of domestic raw materials, supplies and services;
- (g) adoption of value addition in the processing of local, natural and agricultural resources;
- (h) utilization, promotion, development and implementation of information and communication technology;
- (i) any other factors that the Authority considers beneficial to Kenya.

Section 6 of Cap. 485 which it is proposed to amend—

6. Issue of certificate

(1) If the Authority decides to issue an investment certificate it shall issue the certificate on the date the applicant requests.

(2) The Authority may issue an investment certificate in the name of a corporation established by the applicant for the purposes of the investment or in the name of any other business organization to be used for the purposes of the investment.

(3) *Deleted by Act No. 6 of 2005, s. 57.*

(4) A local investor who does not hold an investment certificate shall register the investment with the Authority.

Section 8 of Cap. 485 which it is proposed to amend—

8. Transfer

(1) An investment certificate may be transferred only with the written approval of the Authority.

(2) The transfer of an investment certificate is subject to any restrictions prescribed in the regulations.

Section 2 of Cap. 226 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“authorised officer” means a labour officer, employment officer or medical officer;

“basic salary” means an employee's gross salary excluding allowances and other benefits;

“Board” means the National Labour Board;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to labour matters;

“casual employee” means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time;

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

“collective agreement” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers' organization;

“contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;

“dependent” means a member of an employee's family or a relative who substantially depends on that employee for his livelihood;

“Director” means a person appointed as the Director of Employment;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation;

“employee” means a person employed for wages or a salary and includes an apprentice and indentured learner;

“employee contribution” deleted by Act No. 20 of 2020, Sch.;

“employee earnings” deleted by Act No. 23 of 2019, s. 52;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

“employer contribution” means the employer's contribution payable into the National Housing Development Fund;

“exit certificate” means a written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society;

“forced or compulsory labour” means any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service;

“HIV” means the Human Immune-Deficiency Virus;

“industrial undertaking” includes—

- (a) a mine, quarry and other works for the extraction of any substance from the surface or under the surface of the earth;
- (b) a factory or a place where raw materials are manufactured, processed or packaged;
- (c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure; or
- (d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand:

Provided that—

- (i) the Cabinet Secretary, if he sees fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking, may by order declare that the employment shall be excluded from the provisions of this Part relating to industrial undertakings, and thereupon the employment shall be deemed not to be employment in an industrial undertaking for the purposes of this Part;
- (ii) an undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

“labour inspector” means a person appointed as a labour inspector;

“labour officer” means a person appointed as the Commissioner of Labour, a Senior Deputy Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, an Industrial Relations Officer or a Labour Officer;

“lockout” means the closing of a place of employment or the suspension of work or refusal by an employer to employ any employees—

- (a) for the purpose of compelling the employees of the employer to accept any demand in request of a trade dispute; and
- (b) not for the purpose of finally terminating employment;

“migrant worker” means a person who migrates to Kenya with a view to being employed by an employer and includes any person regularly admitted as a migrant worker;

“mine” includes an undertaking, whether public or private, for the extraction of a substance from the surface, or from under the surface of the earth;

“Minister” deleted by Act No. 19 of 2015, s. 143(c);

“National Housing Development Fund” deleted by Act No. 20 of 2020, Sch.;

“organisation” includes employees' trade unions and employers organisations;

“parties” means the parties to a contract of service;

“piece work” means any work the pay for which is ascertained by the amount of work performed irrespective of the time occupied in its performance;

“probationary contract” means a contract of employment, which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period;

“redundancy” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

“Registrar” means the Registrar of Trade Unions;

“remuneration” means the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;

“strike” means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers' organization of which their employer is a member, to accede to any demand in respect of a trade dispute;

“task” means such amount of work as can, in the opinion of an authorised officer, be performed by an employee in an ordinary working day;

“trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employer's organisation;

“woman” means a female of the age of eighteen years or above;

“worst form of child labour” with respect to juveniles, means their employment, engagement or usage in any activity comprising of—

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child;

“young person” means a child who has attained the age of sixteen years but has not attained the age of eighteen years.

Section 2 of Cap. 236A which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“air pollution” means air contaminated by substances whatever their physical state, which are harmful to health or otherwise dangerous;

“article for use at work” means—

- (a) any plant designed for use or operation (whether exclusively or not) by persons at a workplace; and
- (b) any article designed for use as a component in such plant;

“biological monitoring” means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to or absorption of any substance or organism by persons;

“bodily injury” includes injury to health;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for labour matters;

“class or description” in relation to workplaces, includes a group of workplaces described by reference to a locality;

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

“competent person” in relation to any duty or function, means a person who has adequate training, relevant qualifications and experience to enable him to perform that duty or function;

“Council” means the National Council for Occupational Safety and Health established under section 27;

“court” means a magistrate’s court;

“Director” means the Director of Occupational Safety and Health Services appointed under section 23;

“driving belt” includes any driving strap or rope;

“employee” means a person who works under a contract of employment and related expressions shall be construed accordingly;

“exposure” means the amount of a workplace agent that has reached an individual worker (external dose) or has been absorbed into the individual worker (absorbed dose);

“fume” includes gas or vapour;

“general register” means the register kept in a workplace as required under section 122;

“highly flammable liquid” means any liquid, liquid solution, emulsion or suspension which gives off a flammable vapour at a temperature of less than 32 degrees centigrade;

“improvement notice” means a notice issued under section 36 of this Act;

“machinery” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;

“maintained” means maintained in an efficient state, in an efficient working order and in good repair;

“major hazard installation” means an installation—

- (a) where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or
- (b) where any substance is produced, processed, used, handled or stored in such a form that it has the potential to cause a major incident;

“major incident” means an occurrence of catastrophic proportions resulting from the use of plant or machinery or from activities at a workplace;

“medical surveillance” means a planned programme of periodic examination, which may include clinical examinations, biological monitoring or medical tests of persons employed by a designated health practitioner or by an occupational medical practitioner;

“noise” means all sound energy, which can result in hearing impairment or be harmful to health or otherwise dangerous;

“occupational hygiene” means the anticipation, recognition, evaluation, monitoring and control of conditions arising in or from the workplace, which may cause illness or adverse health effects to persons;

“occupational safety and health officer” means any officer appointed under section 26 and includes the Director appointed under section 23;

“occupier” means the person or persons in actual occupation of a workplace, whether as the owner or not and includes an employer;

“owner” means the person for the time being receiving the rents or profits of premises whether on his own account or as agent or trustee of another person, or who would receive the rents and profits if the premises were leased;

“plant” includes any equipment, gear, machinery, apparatus or appliance or any part thereof;

“premises” includes any place and, in particular includes—

- (a) any vehicle, vessel aircraft or hovercraft;
- (b) any installation on land including the foreshore and land intermittently covered by water, any offshore installation or any other installation whether floating, or resting on seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof;
- (c) any tent or movable structure;

“prime mover” means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source;

“process” includes the use of any locomotive;

“prohibition notice” means a notice issued under section 37;

“risk” means the probability of occurrence of an adverse effect from a substance on people or the environment combined with the magnitude of the consequence of that adverse effect;

“safety and health advisor” means any person who holds a minimum qualification of a certificate in occupational safety and health from a recognised institution and has at least five years proven practical experience in that field;

“sanitary conveniences” includes urinals, water-closets, earth-closets, privies, ash pits and any similar convenience;

“self-employed person” means an individual who works for gain or reward other-wise than under a contract of employment, whether or not he employs others;

“steam boiler” means any closed vessel in which for any purpose, steam is generated under pressure greater than atmospheric pressure, and includes any economizer used to heat water being fed to any such vessel, and any superheated used for heating steam;

“substance” means any natural or artificial matter or material whether in solid or liquid form or in the form of a gas or vapour;

“supplier” means a person who provides articles or substances by way of sale, lease, hire or hire-purchase, whether as principal or agent;

“transmission machinery” means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other devices by which the motion of a prime mover is transmitted to or received by any machine or appliance;

“user” in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a leaser of, or any person employed in connection with, that plant or machinery;

“vibration” means mechanical energy transmitted to a person’s body from a source of oscillations and is harmful to health or otherwise dangerous;

“workplace” includes, any land, premises, location, vessel or thing, at, in, upon, or near which, a worker is, in the course of employment;

“workroom” means any room or cubicle in which work is done by persons employed.

Section 2 of No. 2 of 2024 which it is proposed to amend—

2. Interpretation

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

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 26 (1);

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 16;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 25;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469);

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

“Fund” means the Affordable Housing Fund established under section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

- (2) For purposes of this Act, “affordable housing unit” refers to—
- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
 - (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
 - (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty nine thousand shillings; or
 - (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Section 90 of Cap.280 which it is proposed to amend—

90. Remedies of a chargee

(1) If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the chargee may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters—

- (a) the nature and extent of the default by the chargor;
- (b) if the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;
- (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the chargor must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;
- (d) the consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and

(e) the right of the chargor in respect of certain remedies to apply to the court for relief against those remedies.

(3) If the chargor does not comply within ninety days after the date of service of the notice under, subsection (1), the chargee may—

- (a) sue the chargor for any money due and owing under the charge;
- (b) appoint a receiver of the income of the charged land;
- (c) lease the charged land, or if the charge is of a lease, sublease the land;
- (d) enter into possession of the charged land; or
- (e) sell the charged land;

(4) If the charge is a charge of land held for customary land, or community land shall be valid only if the charge is done with concurrence of members of the family or community the chargee may—

- (a) appoint a receiver of the income of the charged land;
- (b) apply to the court for an order to—
 - (i) lease the charged land or if the charge is of a lease, sublease the land or enter into possession of the charged land;
 - (ii) sell the charged land to any person or group of persons referred to in the law relating to community land.

(5) The Cabinet Secretary shall, in consultation with the Commission, prescribe the form and content of a notice to be served under this section.

Section 96 of Cap.280 which it is proposed to amend—

96. Chargee's power of sale

(1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.

(2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—

- (a) the Commission, if the charged land is public land;

- (b) the holder of the land out of which the lease has been granted, if the charged land is a lease;
- (c) a spouse of the chargor who had given the consent;
- (d) any lessee and sublessee of the charged land or of any buildings on the charged land;
- (e) any person who is a co-owner with the chargor;
- (f) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;
- (g) any guarantor of the money advanced under the charge;
- (h) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and
- (i) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.

Section 2 of Cap. 510 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“Agency” deleted by Act No. 18 of 2018, Sch.;

“Authority” means the Anti-Counterfeit Authority established under section 3;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to industrialization;

“Commissioner” shall have the meaning assigned to it under the Kenya Revenue Authority Act (Cap. 469);

“complainant” means a person, institution, government agency or state corporation entitled to lay a complaint under section 33(1), or who has laid such a complaint;

“consumer” includes any member of the public or person who purchases or likely to purchase goods as an end user other than the owner of intellectual property right; and

“counterfeiting” means taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods—

- (a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;
- (b) the manufacture, production or making, whether in Kenya, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his licence;
- (c) the manufacturing, producing or making of copies, in Kenya, in violation of an author's rights or related rights;
- (d) in relation to medicine, the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging:

Provided that nothing in this paragraph shall derogate from the existing provisions under the Industrial Property Act (Cap. 509);

“counterfeit goods” means goods that are the result of counterfeiting any item that bears an intellectual property right, and includes any means used for purposes of counterfeiting;

“counterfeit goods depot” means a place designated as such under section 29;

“counterfeit mark” means a spurious mark—

- (a) that is used in connection with any goods, labels, patches, stickers, wrappers, budes, emblems, medallions, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature;
- (b) that is identical with, or substantially indistinguishable from, a mark registered in the trade mark register and in use, whether or not a person knows such a mark was registered;
- (c) that is applied to or used in connection with the goods for which the mark is registered, or is applied to or consists of a label, patch, sticker, wrapper, badges, emblems, medallion, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature, that is designed, marked or otherwise intended to

be used on or in connection with the goods for which the mark is registered; and

- (d) the use of which is likely to cause confusion, to cause mistake, or to deceive;

“document” includes a tape recording, a photograph and any electronic, magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored;

“exporter” includes any person who, at the relevant time—

- (a) is the owner or is in control or possession of any goods exported or to be exported from Kenya;
- (b) carries the risk for any goods so exported or to be so exported;
- (c) represents that, or acts as if, he is the exporter or owner of any goods so exported or to be so exported;
- (d) actually takes, or attempts to take, any goods from Kenya;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and, in relation to imported goods destined for exportation from Kenya, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside Kenya representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper;

“importer” includes any person who, at the relevant time—

- (a) is the owner or is in control or in possession of any goods imported or to be imported into Kenya;
- (b) carries the risk for any goods so imported or to be so imported;
- (c) represents that, or acts as if, he is the importer or owner of any goods so imported;
- (d) actually brings, or attempts to bring, any goods into Kenya;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“inspector” means a person appointed as such under section 22;

“intellectual property right” includes—

- (a) any right protected under the Copyright Act (Cap. 130);
- (b) any plant breeders’ right granted under the Seeds and Plant Varieties Act (Cap. 326);
- (c) any right protected under the Trade Marks Act (Cap. 506); and
- (d) any right protected under the Industrial Property Act (Cap. 509);

“owner” in relation to an intellectual property right, includes a person who has the capacity in law to enforce the intellectual property right in his own name;

“package” means any container, wrapping or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods;

“prescribed” means prescribed by regulations made under section 37;

“protected goods” means—

- (a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his authority;
- (b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his authority, but which has not yet been manufactured, produced or made, or to which that subject matter has not yet been applied, with the authority of or by that owner, whichever is applicable;

“tools” include machinery and equipment;

“trade” includes business and profession; and

“vehicle” includes any motorcar, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessels, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal.

Section 6 of Cap. 510 which it is proposed to amend—

6. Board of the Authority

- (1) There shall be a Board of the Authority which shall consist of —
- (e) a Chairperson appointed by the Cabinet Secretary from amongst the members appointed under paragraph (h);
 - (f) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade or his or her representative;
 - (g) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or his or her representative;(cc) the Attorney-General or his representative;
 - (h) deleted by Act No. 25 of 2015, Sch.;*
 - (i) the Commissioner-General of the Kenya Revenue Authority, who may be represented by the Commissioner of Customs;
 - (j) the Managing Director of the Kenya Bureau of Standards;
 - (k) the Chief Executive of the Kenya Association of Manufacturers or a representative, being a person who meets the qualifications set out in paragraph (h); and
 - (l) two members appointed by the Cabinet Secretary, not being public officers, and who hold a degree from a university recognised in Kenya and have at least ten years' experience in matters relating to—
 - i. intellectual property rights;
 - ii. consumer protection, or
 - iii. trade.

(2) A person shall not qualify to be appointed as Chairperson under subsection (1)(a) unless such person is a holder of a degree in law or science from a recognised institution, and has at least five years working experience in the field of trade, industry or intellectual property.

Section 7 of Cap. 510 which it is proposed to amend—

7. Powers of the Board

The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) formulate, with approval of the Cabinet Secretary, policies pertaining to the organisation, management and implementation of the objects of the Authority;
- (b) control, supervise and administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open a banking account or banking accounts for the funds of the Authority; and
- (g) invest any funds of the Authority not immediately required for its purposes in the manner provided for in section 21. *Section 23 of Cap. 510 which it is proposed to amend—*

23. Powers of inspectors

- (1) An inspector may at any reasonable time—
 - (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods are to be found, or on reasonable grounds are suspected to be manufactured, produced or made, and search such place, premises or vehicle and any person found in such place, premises or vehicle, for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods, and for purposes of entering, inspecting and searching such a vehicle, an inspector may stop the vehicle, wherever found, including on any public road or at any other public place;
 - (b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that those steps shall not include the destruction or alienation of the relevant goods unless authorized by an order issued by a court of competent jurisdiction;

- (c) seize detain, and, where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark on such goods;
- (e) if he reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods—
 - i. question that person and take down a statement from him;
 - ii. demand and procure from that person any book, document, article, item or object which in any way may be relevant to nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods in question; and
- (f) seal or seal off any place, premises or vehicle at, on or in which—
 - i. the goods in question are found, or are manufactured, produced or made, either wholly or in part;
 - ii. any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to those goods;
 - iii. the packaging for those goods is prepared; or
 - iv. the packaging of those goods is undertaken.

(2) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

(1) An inspector may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act and may search and detain such a person:

Provided that no person shall be arrested under this section unless he obstructs or hinders the inspector or refuses to give his name and address

to the inspector or to produce to him satisfactory evidence of his identity, or gives a name and address which the inspector has reason to believe to be false or it appears to the inspector that such a person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

(2) An inspector shall have the power to investigate any offence related or connected to counterfeiting notwithstanding that such an offence is not expressed as such under the provisions of this Act.

(3) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of counterfeit goods under the East African Community Customs Management Act, 2004.

(4) If a magistrate, on sworn information in writing—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being, or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.

(5) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has so entered by virtue of a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

Section 27 of Cap. 510 which it is proposed to amend—

27. Storage and access to seized goods

(1) Goods that have been seized under section 23(1) shall be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot—

(ii) is ordered by a court to return, release, destroy or otherwise dispose of those goods as specified in the order:

Provided that in the case of counterfeit goods, such goods shall be destroyed at the expense of the local manufacturer or importer, as the case may be, based on the environmental considerations and the capacity of the country to destroy the goods, or shall be reshipped;

(iii) is directed by an inspector under section 28 to release the goods to the person from whom they were seized.

(2) Upon an application in the prescribed manner, goods seized under section 23(1) shall, within five working days, be made available for inspection by the complainant or prospective complainant, if any, the suspect or any other interested person, at the counterfeit goods depot at any reasonable time.

(3) Upon an application in the prescribed manner, the Executive Director may make a sample of the seized goods available within a period of five working days to the applicant for testing or analysis.

(4) An inspector may take, in the prescribed manner, samples of goods in reasonable quantities for testing or analysis.

Section 28 of Cap. 510 which it is proposed to amend—

28. Release of seized goods

(1) Where any goods are seized and detained under section 23, they shall be returned, less any portion thereof which has been reasonably utilized for the purpose of any test or analysis, to the person from whom they were seized within a period of three months after the date of seizure unless, within such period, some person is charged with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods.

(2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1), and any person is convicted of that offence, the court which made the conviction may order that any goods seized and detained in relation to or in connection with which such offence was committed shall be forfeited to the Government for destruction at the expense of the person so convicted.

(3) The court before which a person is charged with an offence under this Act shall, whether such person is convicted of the offence or not, order that any goods in his possession which appear to the court to be counterfeit goods or to be tools used or intended to be used for making counterfeit goods, be destroyed or otherwise dealt with as the court may deem appropriate.

(4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to have the counterfeit goods forfeited to the State for destruction.

Section 34B of Cap. 510 which it is proposed to amend—

34B. Trademark

(1) Trademarks relating to goods to be imported into Kenya, irrespective of the place of registration, shall be recorded with the Agency, in the prescribed manner if the registration is current.

(2) Applicants for recordation of trademarks shall be notified of the approval or denial of an application filed under this section in a prescribed manner by notice in the Anti-Counterfeit newsletter published by the Agency.

(3) An application to record one or more trademarks shall be in writing in the prescribed manner and addressed to the Agency and shall include the following information—

- (a) the name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);
- (b) the places of manufacture of goods bearing the recorded trademark;
- (c) sample of the trademarked goods or a sufficient digital photographic representation of the trademarked goods with appropriate details for identification and differentiation from any counterfeits;
- (d) the name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(e) the identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad.

(4) The application shall be accompanied by—

(a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the Applicant;

(b) the application shall be accompanied by a fee set out in the Second Schedule to the Act:

Provided that if the trademark is registered for more than one class of goods, the fee for recordation shall be for each class.

(5) The recordation of the trademark and protection thereunder shall be effective on the date an application for recordation is approved.

(6) The recordation of a trademark shall remain in force for a period of one year from the date of approval of the application for recordation or the current registration period of the trademark, whichever is shorter.

(7) Recordation of a trademark shall be cancelled if the trademark registration is finally cancelled or revoked.

(8) If there is change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the Agency, the new owner shall apply immediately by—

(a) complying with subsection (4) hereinabove;

(b) describing any time limit on the rights of ownership transferred;

(c) submitting a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the new owner; and

(d) paying a fee as prescribed in the Second Schedule to the Act.

(9) If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Agency accompanied by—

(a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name as changed; and

(b) a fee as prescribed in the Second Schedule to the Act.

(10) The owner of a recorded trademark shall submit a written application in the prescribed manner to the Agency not later than 30 days to the expiration of the current recordation.

(11) An application for renewal of recordation shall be accompanied by—

- (a) a status copy of the certificate of registration certified by the registering authority showing the title to be in the name of the applicant; and
- (b) a statement describing any change of ownership or in the name of the owner and any change of addresses of the owners and places of manufacture;
- (c) a fee as prescribed in the second schedule to the Act.

(12) The provisions of this Section shall apply to the recordation of copyrights, trade names or any other form of intellectual property rights *mutatis mutandis*.

(13) The Agency shall after satisfying itself that imported goods have complied with the provisions of this section issue to the importer of goods a certification mark in the form of an anti-counterfeit security device at a fee to be set out in the Second Schedule to the Act.

(14) The Agency shall have the power to seize and destroy any goods originally imported into Kenya but found within Kenya that do not bear the anti-counterfeit security device.

Section 35 of Cap. 510 which it is proposed to amend—

35. Penalties

(1) A person convicted of an offence under section 32, shall be liable—

- (a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;
- (b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years, or to a fine, not less than five times the value of the prevailing retail price of the goods, or both.

(2) A person convicted of an offence under section 24 or 31, shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.

(3) A court that has convicted a person of an offence under section 32—

(a) shall, when considering which penalty to impose, take into account, inter alia, any risk to human or animal life, health or safety or danger to property, whether movable or immovable, that may arise from the presence or use of the counterfeit goods in question;

(b) may take into account, in mitigation of sentence, any evidence to the effect that such person had fully, truthfully and to the best of his ability disclosed to an inspector who investigated that offence, all information and particulars available to that person in relation to any or all of the following—

(i) the source from which the counterfeit goods involved in the commission of the offence, were obtained;

(ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods;

(ii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods;

(iv) the channels for the distribution of those goods.

(4) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence.

(5) Where a Court has concluded the hearing of a matter in any criminal proceedings whether the suspect is convicted or acquitted and the goods in the opinion of Court are counterfeit and it appears that the suspect has benefited or obtained some monetary advantage from dealing in counterfeit goods the subject matter of the criminal proceedings, the Court shall on application of the prosecutor order the suspect to forfeit that benefit or monetary advantage to the Agency within a period of three months and in default the Agency may trace and recover that benefit or advantage from the suspect.

Schedule to Cap. 510 which it is proposed to amend—

SCHEDULE [s. 8]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS
OF THE BOARD

1. Tenure of office

Any member of the Board, other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment, subject to a maximum of three terms of office.

2. Vacation of office

A member of the Board, other than an ex officio member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members

shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be seven members including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

4. Disclosure of interest by Board members

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding

six months, or to a fine not exceeding one hundred thousand shillings, or both.

5. Execution of instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

6. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.