

SPECIAL ISSUE

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REPUBLIC OF KENYA

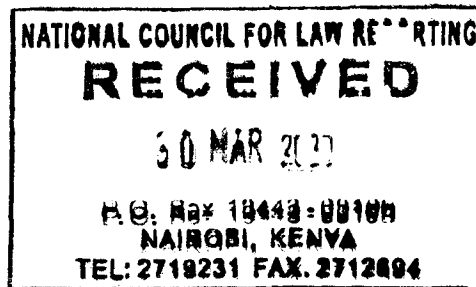
KENYA GAZETTE SUPPLEMENT

ACTS, 2020

NAIROBI, 20th March, 2020

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THE BUSINESS LAWS (AMENDMENT) ACT

No. 1 of 2020

Date of Assent: 18th March, 2020

Date of Commencement: See Section 1

AN ACT of Parliament to make amendments to various statutes to facilitate the ease of doing business in Kenya; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Business Laws (Amendment) Act, 2020 and shall come into force upon assent. Short title.
2. Section 3(6) of the Law of Contract Act is amended— Amendment of section 3 of Cap. 23.
 - (a) in the definition of the word “sign” by inserting the words “physically or by means of an advanced electronic signature” immediately after the word “initial”;
 - (b) by inserting the following new definition in proper alphabetical sequence—

“advanced electronic signature” has the same meaning as defined in the Kenya Information and Communications Act, 1998.
3. Section 5B of the Industrial Training Act is amended in— Amendment of section 5B of Cap. 237.
 - (a) subsection (3) by deleting the words “month or part of a month” and substitute therefor the word “year”; and
 - (b) subsection (4) by deleting the words “month or part” and substitute therefor the word “year”.
4. Section 2 of the Registration of Documents Act is amended— Amendment of section 2 of Cap. 285.
 - (a) in the definition of “book” by inserting the words “an electronic book” immediately after the word “includes”;
 - (b) in the definition of “signature” and “signed” by inserting the words “advanced electronic signature and electronic signature” immediately after the word “mark”;

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

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory may maintain under his or her sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.

- 5.** Section 3 of the Registration of Documents Act is amended by—

Amendment of section 3 of Cap. 285.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after subsection (1)—
 - (2) The Registrar may establish and maintain the Principal and Coast registries in electronic form.

- 6.** Section 4 of Registration of Documents Act is amended by—

Amendment of section 4 of Cap. 285.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following subsection immediately after subsection(1)—
 - (2) A person may register a document referred to in subsection (1) by filing it in physical or electronic form.

- 7.** Section 2 of the Survey Act is amended by inserting the following new subsection in proper alphabetic sequence—

Amendment of section 2 of Cap. 299.

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory may maintain under his or her sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.

“signature” includes an advanced electronic signature, an electronic signature, a mark or writing ones name or initials, making ones initials on the instrument as an indication that one intends to bind himself or herself to the contents of the instrument.

8. Section 5 of the Survey Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 5 of Cap. 299.

(3) A document or plan that has been processed electronically and bears a prescribed security feature shall be deemed to bear the imprint of the seal of the Survey of Kenya.

9. Section 30 (1) of the Survey Act is amended by inserting the words “either physically or electronically” immediately after the word “Director”.

Amendment of section 30 of Cap. 299.

10. Section 32 of the Survey Act is amended by inserting the words “in accordance with section 5” immediately after the expression “Survey of Kenya”.

Amendment of section 32 of Cap. 299.

11. Part V of the Second Schedule to the Income Tax Act is amended by inserting the following new paragraph immediately after paragraph 24D—

Amendment of the Second Schedule to Cap. 470.

24E (1) Where capital expenditure of at least five billion shillings is incurred on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway operations of a minimum storage of one hundred thousand metric tonnes of supplies, there shall be deducted, in computing the gains or profits of the person incurring the expenditure for the year of income in which the bulk storage facilities were first commenced or used a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under sub-paragraph (1) shall be equal to one hundred and fifty per cent of the capital expenditure.

12. Section 2 of the Stamp Duty Act is amended by deleting the definition of “stamp” and substituting therefor the following new definition—

Amendment of section 2 of Cap. 480.

“stamp” means a mark embossed or impressed by electronic means or by means of a dye, franking machine or adhesive stamp recognized by the Government.

13. Section 119 of the Stamp Duty Act is amended by inserting the following paragraph immediately after paragraph (c) –

Amendment of section 119 of Cap. 480.

(d) electronic stamping.

14. Section 83B (1) of the Kenya Information and Communications Act is amended by deleting paragraph (c).

Amendment of section 83B of No. 2 of 1998.

15. Section 44 of the Occupational Safety and Health Act, 2007, is amended by inserting the following new subsections immediately after subsection (10)—

Amendment of section 44 of No. 15 of 2007.

(11) Where a person who occupies or uses any premises as a workplace has less than one hundred employees, the provisions of this section shall not apply for the first twelve months from the date of the registration of the business.

(12) The Cabinet Secretary may, through regulations, exempt certain premises from the application of subsection (11).

16. Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence—

Amendment of section 2 of No. 41 of 2011.

“building code” means the building code provided for under regulations made pursuant to section 42.

17. Section 5 of the National Construction Authority Act, 2011 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (g)—

Amendment of section 5 of No. 41 of 2011.

(ga) enforce the prescribed Building Code in the construction industry.

18. Section 23 of the National Construction Authority Act, 2011, is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 23 of No. 41 of 2011.

(3A) A person who willfully fails to comply with an order of an investigating officer under subsection (3) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both.

19. The National Construction Authority Act, 2011, is amended by inserting the following new section immediately after section 23—

Insertion of new section 23A in No. 41 of 2011.

Mandatory inspections.

23A. The Authority shall undertake mandatory inspections at any time on sites under constructions in accordance with section 5 (2) (g).

20. Section 42 of the National Construction Authority Act, 2011 be amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (a)

Amendment of section 42 of No. 41 of 2011.

-
- (aa) the Building Code in the construction industry; and
 - (ab) the manner of conducting mandatory inspections by the Authority.

21. Section 2 of the Land Registration Act, 2012, is amended—

Amendment of section 2 of No. 3 of 2012.

- (a) in the definition of “instrument” by inserting the words “whether in physical or electronic form” immediately after the word “means”;
- (b) by inserting the following new definitions in proper alphabetical sequence—
 - “advanced electronic signature” means an electronic signature which is—
 - (a) uniquely linked to the signatory;
 - (b) capable of identifying the signatory;
 - (c) created using means that the signatory may maintain under his or her sole control; and
 - (d) linked to the data to which it relates in such a manner that any subsequent change to the data may be detectable.

“electronic signature” means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.

“seal” includes an electronic seal.

“signature” includes an advanced electronic signature, an electronic signature, a mark or writing ones name or initials, making ones initials on the instrument as an indication that one intends to bind himself or herself to the contents of the instrument.

22. The Land Registration Act, 2012 is amended by deleting section 38.

Repeal of section 38 of No. 3 of 2012.

23. The Land Registration Act, 2012 is amended by deleting section 39.

Repeal of section 39 of No. 3 of 2012.

24. Section 44 of the Land Registration Act, 2012, is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 44 of No. 3 of 2012.

(3A) Where practicable, an instrument processed and executed electronically by persons consenting to it by way of an advanced electronic signature or an electronic signature shall be deemed to be a validly executed document.

25. Section 45 of the Land Registration Act, 2012, is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 45 of No. 3 of 2012.

- (c) if the instrument has been electronically processed and executed by the parties consenting to it.

26. Section 83 of the Land Registration Act, 2012, is amended by—

Amendment of section 83 of No. 3 of 2012.

- (i) renumbering the existing provision as subsection (1);

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

(2) A person claiming indemnity under section 81 shall apply to the Chief Land Registrar in the prescribed manner for investigation and consideration.

(3) Any person who is aggrieved with the decision of the Chief Land Registrar may appeal to the Court against the decision in the prescribed manner.

27. Section 39A of the Public Finance Management Act, 2012 is amended—

Amendment of section 39A of No. 18 of 2012.

- (a) in subsection (3) by deleting the words “in time for it to be assented to” and substituting therefor the words “in time for it to be presented for assent”; and
- (b) in subsection (4) by deleting the words “and the Division of Revenue Act” appearing in paragraph

28. Section 5 of the Business Registration Service Act, 2015 is amended in subsection (2) by deleting the word “trade” appearing in paragraph (c) and substitute therefor the words “business reforms and transformation”.

Amendment of section 5 of No. 15 of 2015.

29. Section 35 of the Companies Act is amended in subsection (1) (a) by deleting the words “under its common seal”.

Amendment of section 35 of No. 17 of 2015.

30. Section 37 of the Companies Act, 2015 is amended by deleting subsection (1).

Amendment of section 37 of No. 17 of 2015.

- 31.** The Companies Act, 2015 is amended by deleting section 38. Repeal of section 38 of No. 17 of 2015.
- 32.** The Companies Act, 2015 is amended by deleting section 42. Repeal of section 42 of No. 17 of 2015.
- 33.** The Companies Act, 2015 is amended by deleting section 43. Repeal of section 43 of No. 17 of 2015.
- 34.** Section 289 of the Companies Act, 2015 is amended – Amendment of section 289 of No. 17 of 2015.
- (a) in subsection (1) by—
- (i) deleting paragraph (b) and substituting therefor the following new paragraph immediately after paragraph (a)—
- “(b) in the case of a quoted company, a new item to be put in the agenda of the general nature of business to be dealt with at the meeting.
- (ii) inserting the following new paragraph immediately after paragraph (b)—
- “(c) other business to be dealt with at that meeting.”
- (b) in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—
- “(c) in the case of subsection (1) (b), by members representing at least five percent of the paid up capital of the company.”
- 35.** Section 495 of the Companies Act, 2015 is amended by deleting the words “under the common seal of the company” and substituting therefor the words “duly executed in accordance with section 37”. Amendment of section 495 of No. 17 of 2015.
- 36.** Section 504 of the Companies Act, 2015, is amended by inserting the following new subsections immediately after subsection (2)— Amendment of section 504 of No. 17 of 2015.
- (3) A company in respect of which a bearer share is in issue shall ensure that the share is converted into a registered share.

(4) Subsection (3) shall apply notwithstanding any contrary provision in the company's memorandum or articles of incorporation.

(5) The company shall notify the Registrar within thirty days of the conversion of a bearer share into a registered share.

(6) A right attached to a bearer share shall not be exercised unless the bearer share is converted into a registered share.

(7) A company commits an offence if it fails or refuses to comply with subsection (3) within nine months of the coming into operation of subsection (3).

(8) A company, and each officer of the company, that contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings.

(9) If, after a company or any of its officers has been convicted of an offence under subsection (8), the company or officer continues to fail or refuse to comply with subsection (3), that company or that officer commits a further offence on each day of which the failure or refusal continues and on conviction shall be liable to a fine not exceeding fifty thousand shillings for each such offence.

37. Section 611 of the Companies Act, 2015 is amended—

Amendment of section 611 of No. 17 of 2015.

- (a) in subsection (2) (a) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;
- (b) in subsection (2) (b) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;
- (c) in subsection (4) (a) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”;
- (d) in subsection (4) (b) by deleting the word “fifty” appearing immediately after the words “less than” and substituting therefor the word “ninety”.

38. The Sixth Schedule to the Companies Act, 2015, is amended by deleting paragraph 21.

Amendment of Sixth Schedule to No. 17 of 2015.

39. The Insolvency Act, 2015, is amended by deleting section 560A and substituting therefor the following new section—

Amendment of section 560A of No. 18 of 2015.

Consideration to take into account on applications for approval to lift moratorium.

560A. (1) When considering whether to grant its approval under section 560, the court or the administrator may in particular take into consideration where appropriate –

- (a) the statutory purpose of the administration;
- (b) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
- (c) the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant;
- (d) whether the value of the secured creditor's claim exceeds the value of the encumbered asset;
- (e) whether the secured creditor is not receiving protection for the diminution in the value of the encumbered asset;
- (f) whether the provision of protection may be feasible or overly burdensome to the estate;
- (g) whether the encumbered asset is not needed for the reorganization or sale of the company as a going concern;
- (h) whether relief is required to protect or preserve the value of assets such as perishable goods; or
- (i) whether in reorganisation, a plan is not approved within six months.

(2) An approval granted under subsection (1) shall be for a period of not more than twenty-eight days.

40. The Insolvency Act, 2015 is amended by inserting the following new section immediately after section 723—

Insertion of new section 723A in No. 18 of 2015.

Information by insolvency practitioner.

723A. (1) A creditor may request information from a relevant insolvency practitioner and the insolvency practitioner shall provide the information within—

- (a) five business days after receiving the request; or
- (b) such longer period as may be agreed upon between the creditor and the insolvency practitioner.

(2) If the relevant insolvency practitioner is satisfied that an extension of time is required due to the nature of the request under subsection (1), the insolvency practitioner may, by notice to the creditor in writing, extend the period for providing the information.

(3) A notice under subsection (2) shall—

- (a) be given to the creditor making the request;
- (b) specify the period within which the requested information shall be provided; and
- (c) specify the reasons for the extension of time.

41. Paragraph 1 of Part I of the First Schedule to the Excise Duty Act, 2015 is amended by inserting the following new item—

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

Description	Rate
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)	25%

42. Part A of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new paragraph immediately after paragraph (xxia)—

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

(xxib) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport.

43. Part B of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new paragraph immediately after paragraph (va)—

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

(vb) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport.

