

SPECIAL ISSUE

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Kenya Gazette Supplement No. 121 (Acts No. 28)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2017

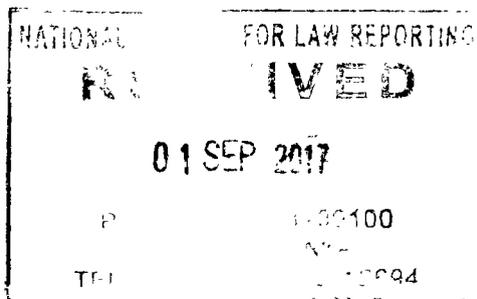
NAIROBI, 3rd August, 2017

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The Companies (Amendment) Act, 2017571





THE COMPANIES (AMENDMENT) ACT**No. 28 of 2017***Date of Assent: 21st July, 2017**Date of Commencement: 16th August, 2017***AN ACT of Parliament to amend the Companies Act, 2015****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Companies (Amendment) Act, 2017.

Short title.

2. Section 3 of the Companies Act, 2015, hereinafter referred to as the “Principal Act” is amended in subsection (1)—

Amendment of section 3 of No. 15 of 2015.

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

“associated company” means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

(b) by deleting the definition of the term “Cabinet Secretary” and substituting therefor the following new definition—

“Attorney-General” means the Attorney-General appointed under Article 156 the Constitution;

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

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

(d) by deleting the definitions of the term “holding company” and substituting therefor the following new definition—

“holding company” in relation to another company, means a company that—

- (a) controls the composition of that other company's board of directors;
- (b) controls more than half of the voting rights in that other company;
- (c) holds more than half of that other company's issued share capital; or
- (d) is a holding company of a company that is that other company's holding company; and
- (e) by deleting the definition of the term “prescribed financial accounting standards” and substituting therefor the following new definition—

No.15 of 2008

“prescribed financial accounting standards” means statements of standard accounting practice issued by the Institute of Certified Public Accountants of Kenya in accordance with the Accountants Act.

3. Section 27 of the principal Act is amended in subsection (2) by deleting the words “an old public” and substituting therefor the words “a private” appearing in paragraph (h).

Amendment of section 27 of No. 15 of 2015.

4. Section 58 of the principal Act is amended by inserting the following new subsections immediately after subsection (4)—

Amendment of section 58 of No. 15 of 2015.

“(5) If the company does not comply with the direction issued under subsection (1) within fourteen days, the Registrar shall publish a notice in the *Gazette* to strike the name of the company off the Register.

(6) As soon as practicable after striking the name of the company off the Register, the Registrar shall publish in the *Gazette* a notice indicating that the name of the company has been struck off the register.

(7) Upon publication of the notice under subsection (6), the company shall be deemed to have been dissolved.

(8) Despite subsection (7)—

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section shall affect the power of the Court to liquidate a company the name of which has been struck off the Register.”

5. Section 77 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “(but only if)”; and
- (b) in subsection (2) by deleting the words “or into a private company limited by guarantee” appearing in paragraph (c).

Amendment of
section 77 of No. 15
of 2015

6. Section 85 of the principal Act is amended in subsection (2) by deleting the words “or into a private company limited by guarantee” appearing in paragraph (d).

Amendment of
section 85 of No. 15
of 2015.

7. The principal Act is amended by repealing section 90 and replacing therefor the following new section—

Repeal of section 90
of No. 15 of 2015.

Registrar not to register conversion unless application for registration complies with prescribed requirements.

90. The Registrar shall not register the conversion of a public limited company into an unlimited private company unless the application for registration—

- (a) contains a statement of the company's new name on conversion; and
- (b) is accompanied by—
 - (i) an assent to the company's conversion, authenticated by or on behalf of all the members of the company; and
 - (ii) a copy of the company's articles as proposed to be amended.

8. Section 93 of the principal Act is amended—

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

Amendment of
section 93 of No.
15 of 2015.

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

(b) in subsection (2), by inserting the following new paragraph immediately after paragraph (c)—

(d) the name and address of the beneficial owners, if any.

(c) by deleting subsection (8) and substituting therefor the following new subsection —

“(8) A company shall lodge with the Registrar a copy of its register of members including information relating to beneficial owners, if any, within thirty days after completing its preparation.”;

(d) in subsection (9) by inserting the words “other than a public limited company” immediately after the word “company”.

9. Section 94 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (a)—

Amendment of section 94 of No. 15 of 2015

“(aa) if the register is prepared at another office of the company other than the registered office, a copy of the register may be kept at that other office;

(ab) if the register is prepared by another person on behalf of the company, a copy of the register may be kept at the office of that other person.”

10. Section 123 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (d)—

Amendment of section 123 of No. 15 of 2015.

“(e) a brother or sister of the director;

(f) a brother or sister of the spouse of the director; or

(g) a grandchild of the director; or

(h) a spouse of any of the persons specified in paragraphs (b), (e), (f) and (g).”

11. Section 135 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (f)—

Amendment of section 135 of No. 15 of 2015.

“(g) the person’s other company directorships, if any.”

12. Section 146 of the principal Act is amended—

Amendment of
section 146 of No.
15 of 2015.

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

“(2) Subsection (1) applies in particular to the exploitation of—

- (a) any property;
- (b) confidential information of the company;
- (c) the director’s position in the company; or
- (d) opportunities in or for the company:

Provided that it does not matter whether the company could take advantage of the property, confidential information or opportunity.”

- (b) in subsection (3) by deleting paragraph (a);
- (c) by deleting subsection (5) and substituting therefor the following new subsection—

“(5) An authorization under subsection (3)

(b) may in the case of a public company be given by—

- (a) a majority of members of the board of directors who do not have a personal interest; or
- (b) a majority of the votes of members who do not have a personal interest, in the case of a transaction valued at an amount that is ten percent or more of the value of the assets of the company”;

- (d) by inserting the following new subsections immediately after subsection (7) —

“(8) A director or member referred to in this section has a personal interest if the director or member or their family member—

- (a) is a party to the transaction or has material financial interest in the transaction; or
- (b) has material financial interest in the transaction that could be expected to affect their judgment adversely to the company.

(9) An arrangement entered into by a company in contravention of this section and any transaction entered into in accordance with the arrangement, whether by the company or any other person, is voidable at the instance of the company, unless—

- (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible;
- (b) the company has been indemnified in accordance with this section by other persons for the loss or damage suffered by it; or
- (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.

(10) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (11) is liable—

- (a) to account to the company for any gain that the person has made (directly or indirectly) as a result of the arrangement or transaction; and
- (b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(11) The persons liable under subsection (10) are—

- (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of this section;
- (b) any person with whom the company entered into the arrangement in contravention of this section who is connected with a director of the company or of its holding company;

- (c) the director of the company, or of its holding company, with whom any such person is connected; and
- (d) any other director of the company who authorised the arrangement or a transaction entered into in accordance with such an arrangement.

(12) A director who contravenes this section commits an offence and is liable on conviction to disqualification for a period not exceeding five years.”

13. Section 147 of the principal Act is amended by deleting subsection (3).

Amendment of section 147 of No. 15 of 2015.

14. Section 151 of the principal Act is amended—

Amendment of section 151 of No. 15 of 2015.

- (a) in subsection (1) by inserting the words “within seventy-two hours” immediately after the words “members of the company” appearing in paragraph (b);
- (b) in subsection (2)—
 - (i) by deleting the words “that exceeds ten percent” and substituting therefor the words “that is ten percent or more”;
 - (ii) by deleting the word “made” and substituting therefor the word “disclose”.

15. Section 153 of the principal Act is amended in subsection (4) by inserting the following new paragraph immediately after paragraph (b)—

Amendment section 153 of No. 15 of 2015.

“(c) the board of directors notifies the members in the next meeting of the action to be taken.”

16. Section 162 of the principal Act is amended—

Amendment of section 162 of No. 15 of 2015.

- (a) by deleting subsections (6); and
- (b) by deleting subsection (7).

17. Section 210 of the principal Act is amended in subsection (2) by deleting the word “ten” and substituting therefor the word “seven”.

Amendment of section 210 of No. 15 of 2015.

18. Section 245 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “Attorney-General” and substituting therefor the word “Registrar”; and
- (b) in subsection (2) by deleting the word “Attorney-General” and substituting therefor the word “Registrar”.

Amendment of section 245 of No. 15 of 2015.

19. Section 246 of the principal Act is amended in subsection (1) by deleting the words “who appears to them to have” and substituting therefor the words “who has” appearing in paragraph (a).

Amendment of section 246 of No. 15 of 2015.

20. Section 304 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection —

Amendment of section 304 of No. 15 of 2015.

“(2) The termination of the appointment of a person to act as proxy does not affect—

- (a) whether the person counts in deciding whether there is a quorum at a meeting of the company;
- (b) the validity of anything that the person does in presiding at the meeting; or
- (c) the validity of a poll demanded by the person at the meeting,

unless the company has received notice of the termination before the start of the meeting.”

21. Section 308 of the principal Act is amended by inserting the following new subsection immediately after subsection (7)—

Amendment of section 308 of No. 15 of 2015.

“(8) Notwithstanding any other provision of this Act, the holders of any class of shares shall be entitled to vote as a group on any variation of the rights of that class if the variation —

- (a) increases or decreases the number of authorized shares of such class;
- (b) changes any of the rights or preferences of the shares of the class;
- (c) creates a right of the holders of any other shares to exchange or convert their shares

- into shares of the type or class held by the class;
- (d) changes the shares held by the group into a different number of shares or into shares of another class;
 - (e) creates a new class of shares that—
 - (i) has rights or preferences superior or substantially equal to those of the class;
 - (ii) increases the rights and preferences of any class of shares having rights and preferences substantially equal to or superior to those of such class; or
 - (iii) increases the rights and preferences of any class of shares having rights and preferences subordinate to those of such class if such an increase would then make them substantially equal or superior to those of such class;
 - (f) limits or denies the existing pre-emptive rights of the shares of such class;
 - (g) cancels or otherwise affects accumulated dividends on the shares of such class;
 - (h) limits or denies the voting rights of such class; or
 - (i) otherwise changes the rights or preferences of the shares held by such class so as to affect them adversely.”

22. The principal Act is amended by repealing section 328 of and replacing therefor the following new section—

Amendment of section 328 of No. 15 of 2015.

Power of directors to allot shares etc: private company with only one class of shares.

328. If a private company has only one class of shares, the directors may exercise any power of the company—

- (a) to allot shares of that class; or
- (b) to grant rights to subscribe for or to convert any security into such shares, except to the extent that they are prohibited from doing so by the company's articles.

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23. Section 329 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 329 of No. 15 of 2015.

“(1) The directors of a company may exercise a power of the company—

- (a) to allot shares in the company; or
- (b) to grant rights to subscribe for or to convert any security into shares in the company, only if they are authorised to do so by the company's articles or by a resolution of the company.

24. The principal Act is amended by repealing section 344.

Repeal of section 344 of No. 15 of 2015.

25. Section 393 of the principal Act is amended in subsection (2) by—

Amendment of section 393 of No. 15 of 2015.

- (a) deleting paragraph (a); and
- (b) in paragraph (b), deleting the words “if the company's articles contain no such provision”.

26. Section 416 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 416 of No. 15 of 2015.

“(2) The directors shall issue a notice of a general meeting not later than twenty-eight days from the day on which a director first became aware of the fact referred to in subsection (1).”

27. The principal Act is amended by repealing section 441.

Repeal of section 441 of No. 15 of 2015.

28. Section 442 of the principal Act is amended—

Amendment of section 442 of No. 15 of 2015.

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

“(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—

- (a) the company's principal purpose in giving the assistance is not for the purpose of the acquisition; or
- (b) giving assistance for that purpose is only incidental to achieving some larger purpose

of the company; and the assistance is given in good faith in the interests of the company.”

- (b) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) If—

- (a) a person has acquired shares in a company; and
- (b) the person or another person has incurred a liability for the purpose of the acquisition;

neither the company nor any other company that is a subsidiary of the company may give financial assistance, either directly or indirectly, for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.”

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

“(4) Subsection (3) does not prohibit a company from giving financial assistance if—

- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company; or
- (b) the reduction or discharge of any such liability is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.”

29. Section 443 of the principal Act is amended—

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

“(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—

- (a) the company's principal purpose in giving the assistance is not for the purpose of the acquisition; or

Amendment of
section 443 of No.
15 of 2015.

(b) giving assistance for that purpose is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.”

(b) by deleting subsection (3) and substituting therefor the following new subsection —

“(3) If—

(a) a person has acquired shares in a private company; and

(b) the person or another person has incurred a liability for the purpose of the acquisition, a public company that is a subsidiary of the company shall not give financial assistance, either directly or indirectly, for the purpose of reducing or discharging the liability.”

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

“(4) Subsection (3) does not prohibit a company from giving financial assistance if—

(a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company; or

(b) the reduction or discharge of any such liability is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.”

30. Section 444 of the principal Act is amended in subsection (1) by deleting the expression “452(1) or (3) or 453 (1) or (3)” and substituting therefor the following expression “442(1) or (3) or 443 (1) or (3)”.

Amendment of
section 444 of No.
15 of 2015.

31. Section 463 of the principal Act is amended by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of
section 463 of No.
15 of 2015.

“(a) if section 458 applies, the shares are to be held and dealt with in accordance with Part XXI, but”

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32. Section 494 of the principal Act is amended in subsection (4) by deleting the expression “441” and substituting therefor the expression “443” appearing in paragraph (a) (i).

Amendment of section 494 of No. 15 of 2015.

33. Section 511 of the principal Act is amended in subsection (1) by deleting the word “may” and substituting therefor the word “shall”.

Amendment of section 511 of No.15 of 2015.

34. Section 539 of the principal Act is amended in subsection (2) by deleting paragraph (a).

Amendment of section 539 of No.15 of 2015.

35. Section 549 of the principal Act is amended by deleting subsection (2).

Amendment of section 549 of No.15 of 2015.

36. Section 550 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 550 of No.15 of 2015.

“(2) A company shall allow any person who makes a request to the company to inspect a report prepared in accordance with section 548 to do so.”

37. Section 564 of the principal Act is amended in subsection (2) by deleting the definition of the word “spouse” and substituting therefore with the following new definition—

Amendment of section 564 of No.15 of 2015.

“spouse” means a husband or wife.”

38. Section 573 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 573 of No.15 of 2015.

“(2) Except in so far as the regulations otherwise provide, a company shall ensure its register of debenture holders (if any) is kept open for inspection—

- (a) at the registered office;
- (b) if the register is prepared at another office of the company (other than the registered office), a copy of the register may be kept at that other office; and
- (c) if the register is prepared by some other person on behalf of the company, a copy of the register may be kept at the office of that other person.”

39. Section 626 of the principal Act is amended in subsection (2)—

Amendment of section 626 of No.15 of 2015.

- (a) in paragraph (b) by inserting the words “and the East Africa Community” immediately after the word “Kenya”; and
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph—
 - “(c) a company and its subsidiaries, which carries on co-operative society activities, micro finance activities, trade in insurance market or banking activity.”

40. Section 633 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 633 of No.15 of 2015.

“(2) Unless otherwise prescribed in the articles or by any law, the accounting reference date is a date specified by an ordinary resolution.”

41. Section 640 of the principal Act is amended in subsection (1) by inserting the words “or more” appearing in paragraph (b) (ii) immediately after the word “percent”.

Amendment of section 640 of No.15 of 2015.

42. Section 705 of the principal Act is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 705 of No.15 of 2015.

“(c) is signed by a director or the secretary.”

43. Section 717 of the principal Act is amended in subsection (1) by deleting the words “reasonably resolve otherwise on the ground” and substitute therefor with the word “resolve”.

Amendment of section 717 of No.15 of 2015.

44. Section 718 of the principal Act is amended—

Amendment of section 718 of No.15 of 2015.

- (a) in subsection (1) by deleting the words “Cabinet Secretary” and substituting therefor the word “Registrar”; and
- (b) in subsection (2) by deleting the word “Cabinet Secretary” and substituting therefor the word “Registrar”.

45. Section 724 of the principal Act is amended in subsection (3) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Registrar”.

Amendment of section 724 of No.15 of 2015.

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46. Section 774 of the principal Act is amended in subsection (1) by deleting paragraph (d).

Amendment of section 774 of No.15 of 2015.

47. Section 790 of the principal Act is amended in subsection (1) by deleting the expression “877(1)” and substituting therefor the expression “786 and 787(1)”.

Amendment of section 790 of No. 15 of 2015.

48. Section 807 of the principal Act is amended in subsection (1) by deleting the expression “802” and substituting therefor the expression “806”.

Amendment of section 807 of No. 15 of 2015.

49. Section 815 of the principal Act is amended in subsection (8) by deleting the expression “818 and 834” immediately after the word “sections” and substituting therefor the following new expression “816”.

Amendment of section 815 of No. 15 of 2015.

50. Section 821 of the principal Act is amended in subsection (2) by deleting the expression “805” and substituting therefor the expression “806”.

Amendment of section 821 of No. 15 of 2015.

51. The principal Act is amended by repealing Part XXXVI.

Repeal of Part XXXVI of No. 15 of 2015.

52. Section 974 of the principal Act is amended in subsection (5) by deleting the words “certificate of registration” and substituting therefor the words “certificate of compliance”.

Amendment of section 974 of No. 15 of 2015

53. Section 975 of the principal Act is amended —

Amendment of section 975 of No. 15 of 2015.

(a) in subsection (4) by deleting the words “certificate of registration” and substituting therefor the words “certificate of compliance” appearing in paragraph (b); and

(b) in subsection (5) by deleting the words “certificate of registration” and substituting therefor the words “certificate of compliance”.

54 Section 978 of the principal Act is amended in the marginal note by deleting the words “certificate of registration” and substituting therefor the words “certificate of compliance”.

Amendment of section 978 of No. 15 of 2015.

55. Section 997 of the principal Act is amended—

Amendment of section 997 of No. 15 of 2015.

(a) in the marginal note by deleting the expression “1010” and substituting therefor the expression “996”;

- (b) by deleting subsection (1); and
- (c) in subsection (3) by deleting the expression “995” and substituting therefor the expression “996”.

56. Section 1017 of the principal Act is amended by deleting the expression “1101” and substituting therefor the expression “1021”.

Amendment of
section 1017 of
No. 15 of 2015.

57. Section 1024 of the principal Act is amended in subsection (7) by deleting the expression “1025” and substituting therefor the expression “1026”.

Amendment of
section 1024 of
No. 15 of 2015.

58. Section 1026 of the principal Act is amended by deleting the subsection (3).

Amendment of
section 1026 of
No. 15 of 2015.

59. The Sixth Schedule of the principal Act is amended in paragraph 65 by deleting the words “certificate of registration” and substituting therefor the words “certificate of compliance”.

Amendment of
the Sixth
Schedule of No.
15 of 2015.

