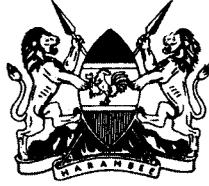


SPECIAL ISSUE

Kenya Gazette Supplement No. 114 (Acts No. 12)



REPUBLIC OF KENYA

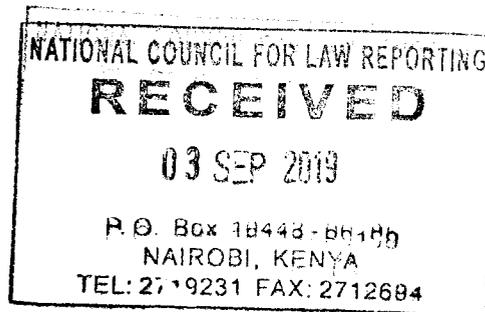
KENYA GAZETTE SUPPLEMENT

ACTS, 2019

NAIROBI, 9th July, 2019

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**THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) ACT**

No. 12 of 2019

Date of Assent: 5th July, 2019

Date of Commencement: 23rd July, 2019

AN ACT of Parliament to make various amendments to statute law

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2019. Short title.

2. The several laws specified in the first column of the Schedule are amended, in the provisions specified in the second column thereof, in the manner respectively specified in the third column. Amendment of written laws.

SCHEDULE

| <i>Written law</i> | <i>Provision</i> | <i>Amendment</i> |
|---|------------------|--|
| Districts and Provinces Act, 1992 (No. 5 of 1992) | New | Insert the following new section immediately after section 5— |
| | | <p style="text-align:center">Regulations. 6. The Cabinet Secretary of the Ministry for the time being responsible for internal affairs may make regulations for the better carrying into effect the provisions of this Act.</p> |
| Second Schedule, item 23 | | <p>Delete the words “in the vicinity of Mount Zulia” appearing in the first paragraph and substitute therefor the words “within the northern spur of Mount Zulia”.</p> <p>Delete the paragraph beginning with the words “thence north-easterly” and substitute therefor the following new paragraph—</p> <p style="text-align:center">“thence in a straight line north-easterly to the summit of Moruese Hill;</p> |

thence north-easterly to the tri-junction of the Kenya, South Sudan and Ethiopia border, on the southernmost spur of Mount Naita (Solka);

thence easterly to the source of River Nakua (Kibish);

thence easterly along this river to a point approximately 2.5 kilometres north of Kibish Police Post;

thence southerly to the Boundary Pillar D23”.

| | | |
|--|----------------|---|
| The Merchant Shipping Act, 2009 (No. 4 of 2009) | s. 16(1) | <p>Insert the following new subsection immediately after subsection (1)—</p> <p>“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the Government”.</p> |
| The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010) | s.2 | <p>Delete the definition of the word “magistrate” and substitute therefor the following—</p> <p>“magistrate” has the meaning assigned to it in the Magistrates’ Court Act, 2015 (No. 26 of 2015).</p> |
| The Tourism Act, 2011 (No. 28 of 2011) | s.2 | <p>Insert the following new definition in its proper alphabetical sequence—</p> <p>“university” has the meaning assigned to it under the Universities Act, 2012 (No. 42 of 2012).</p> |
| | s.67(4)(d)(ii) | <p>Insert the expression “of whom, two persons shall be nominated by universities, one person nominated by public universities and the other by private universities” immediately after the expression “management or marketing”.</p> |
| | s.68(f) | <p>Insert the expression “, and university offering training in tourism hospitality” immediately after the word “College”.</p> <p>Delete the expression “and of such other tourism hospitality training institutions as may be established under this Act”.</p> |
| The Public Finance Management | s.2(1) | <p>Delete paragraph (d) in the definition of “accounting officer” and substitute therefor the following new paragraph—</p> |

Act, 2012
(No. 18 of
2012)

“(d) in the case of the Parliamentary Service Commission—

- (i) the Clerk of the Senate in respect of the Senate;
- (ii) the Clerk of the National Assembly in respect of the National Assembly; and
- (iii) such other officer in the parliamentary service in respect of any other office in the parliamentary service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution”.

s.39 Delete the words “except the Finance Bill” appearing immediately after the words “relevant Bills”.

New Insert the following new section immediately after section 39—

Submission,
consideration
and passing of
Finance Bill.

39A. (1) The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be assented to by 30th June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall—

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;
- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

s.41 Delete

The Prevention of Terrorism Act, 2012 (Act No. 30 of 2012)

s. 40A(2) Delete paragraph (e) and substitute therefor the following new paragraph—

“(e) the Directorate of Immigration;”

Insert the following new paragraphs immediately after paragraph (e)—

(f) the National Police Service;

- (g) the Ministry for the time being responsible for foreign affairs;
- (h) the Office of the Director of Public Prosecutions;
- (i) the Kenya Wildlife Services;
- (j) the Probation and Aftercare Services Department;
- (k) the Kenya Prisons Service;
- (l) the Kenya Civil Aviation Authority;
- and”

Renumber paragraph (f) as paragraph (m).

s.40A(3) Add the expression “renewable once” at the end thereof.

s.40B(2) Insert the following new paragraph immediately after paragraph (e)—

“(f) analyse all information and intelligence on terrorism and counter-terrorism for purposes of proposing policy and legal adjustments to the National Security Council and other national security leadership.”

s.40C Renumber the existing provisions as subsections (2) and (3) respectively and insert the following new subsection immediately before the renumbered subsections—

“(1) The Centre shall be an approving and reporting institution for all civil society organisations and international non-governmental organisations engaged in preventing and countering violent extremism and radicalisation through counter-messaging or public outreach, and disengagement and reintegration of radicalised individuals.”

The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)

s. 8(1)(c) Delete and substitute therefor the following new paragraphs—

“(c) one member, being an Advocate of the High Court of Kenya, nominated by the Law Society of Kenya and appointed by the Attorney-General;

(ca) one member, being an officer in the Office of the Attorney-General, appointed by the Attorney-General.”

s.8(4) Delete.

s.11(9) Delete.

The Value Added Tax Act, 2013 (No. 35 of 2013)

s.17(5) Delete the proviso and substitute therefor the following new provisos—

“Provided that any such excess shall be paid to the registered person by the Commissioner where—

(a) such excess arises from making zero rated supplies; or

(b) such excess arises from tax withheld by appointed tax withholding agents; and

(c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015; and

(d) the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable.

“Provided further that, notwithstanding section 17(5)(d), a registered person who, within a period of thirty-six months prior to the commencement of section 17(5)(b) and (c), has a credit arising from withholding tax, may make an application for a refund of the excess tax within twelve months from the commencement date”.

The Wildlife Conservation and Management Act, 2013 (No. 47 of 2013)

s.23(1) Delete the word “Endowment” in the marginal note and substitute therefor the words “Conservation Trust”.

s.23(2) Delete paragraph (a) and substitute therefor the following new paragraph—

“(a) a Chairperson appointed by the President”.

Insert the phrase “one of whom shall be a representative nominated by an umbrella wildlife conservancy body” immediately after the word “matters” appearing in paragraph (e).

Delete the words “who shall be the Chairperson” appearing in paragraph (b).

The
Companies
Act, 2015
(No. 17 of
2015)

s.9(1)(a) Insert the following new sub-paragraph immediately after sub-paragraph (iii) —

“(iv) requires the consent of all members to add a new member.”

s.93(1) Delete the expression “which shall include information relating to beneficial owners of the company, if any”.

s.93(2)(c) Delete.

s.93(8) Delete the expression “including information relating to beneficial owners, if any”.

New. Insert the following new section immediately after section 93—

Division 2A — Register of Beneficial Owners

Company to
keep register
of beneficial
owners.

93A. (1) Every company shall keep a register of its beneficial owners.

(2) A company shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.

(3) A company shall lodge with the Registrar a copy of its register of beneficial owners, within thirty days after completing its preparation.

(4) A company other than a public listed company shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.

(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

New. Insert the following new section immediately after section 275—

Annual general meeting. **275 A.** (1) Every company shall convene a general meeting once a year.

(2) Subsection (1) does not apply to single member companies.

(3) The Registrar may, on the application of the company or for any other reason the Registrar thinks fit, extend the period referred to in subsection (1) even if, as a result, the period is extended beyond the calendar year.

(4) A company that fails to comply with this section commits an offence and is liable to a fine not exceeding one hundred thousand shillings.

s.329(1) Delete and substitute therefor the following new subsection—

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

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

s.329(2) Delete the words “and may be unconditional or subject to conditions”.

s.611(2)(a) Delete the word “ninety” and substitute therefor the word “fifty”.

s.611(2)(b) Delete the word “ninety” and substitute therefor the word “fifty”.

s.611(4)(a) Delete the word “ninety” and substitute therefor the word “fifty”.

s.611(4)(b) Delete the word “ninety” and substitute therefor the word “fifty”.

s. 615(3)(a)(i) Delete the word “ninety” and substitute therefor the word “fifty”.

s.615(3)(a)(ii) Delete the word “ninety” and substitute therefor the word “fifty”.

s.615(4)(b)(i) Delete the word “ninety” and substitute therefor the word “fifty”.

s.615(5)(a)(i) Delete the word “ninety” and substitute therefor the word “fifty”.

s.615(5)(a)(ii) Delete the word “ninety” and substitute therefor the word “fifty”.

s.624(3)(c) Delete and substitute therefor the following new paragraph—

“(c) it does not have more than twenty-five employees.”

The
Insolvency
Act, 2015
(No. 18 of
2015).

New. Insert the following new section immediately after section 560—

Considerations
for approval to
lift moratorium.

560A. When considering whether to grant approval under section 560, the court may in particular take into consideration—

- (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; and
- (d) the conduct of the parties.

s.615(4) Insert the words “including a contract of a loan or other credit or finance facility for the benefit of the company and necessary for the continuation of any business of the company,” immediately after the word “contract”.