

**SPECIAL ISSUE**

**Kenya Gazette Supplement No. 35 (Acts No. 4)**



REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2012**

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**NAIROBI, 2nd May, 2012**

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# THE FINANCE ACT

**No. 4 of 2012**

*Date of Assent: 27th April, 2012*

*Date of Commencement: See Section I*

**An Act of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto**

**ENACTED** by the Parliament of Kenya, as follows –

## PART I – PRELIMINARY

1. This Act may be cited as the Finance Act, 2012, and shall come into operation, or be deemed to have come into operation, as follows –

Short title and commencement.

- (a) section 23, on the 1<sup>st</sup> January, 2006;
- (b) sections 6, 10, 11, 12(a), 13, 16(a)(i), 16(a)(ii), 18, 19, 20, 21 and 22(a)(i), on the 9<sup>th</sup> June, 2011;
- (c) sections 3, 4, 5, 9, 14, 17, 22(b), 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61, on the 1<sup>st</sup> January, 2012;
- (d) sections 2, 7, 8, 24, 26, 31, 45, 46, 47, 48, 50 and 51, on the 2<sup>nd</sup> May, 2012;
- (e) sections 12(b), 15, 16(a)(iii), 16(b) and 22(a)(ii), on such date as the Minister may, by notice in the Gazette, appoint.

**PART II – CUSTOMS AND EXCISE**

Amendment of  
section 95 of  
Cap.472.

**2.** Section 95 of the Customs and Excise Act is amended –

- (a) in subsection (5)(a) by inserting the words “or such further period, not exceeding six months, as the Commissioner may, on the application of a licensee, permit in respect of that licence” and
- (b) by inserting the following new subsection after subsection (5) –

“(6) The Commissioner shall ensure that a metering device prescribed under subsection (4) does not compromise the safety of the goods or materials that are manufactured by a licensee or the health of the consumers of such goods or materials”.

Amendment of  
section 119 of  
Cap.472.

**3.** Section 119 of the Customs and Excise Act is amended by inserting the following new subsection immediately after subsection (6) –

- (7) Notwithstanding the provisions of subsection (1) and (1A), the Minister may, by notice in the Gazette, adjust the specific rate of excise duty to take account of inflation.

4. Section 127C of the Customs and Excise Act is amended in subsection (2) by adding the words "except in the case of beer and wine, where the value shall be the retail selling price as determined in accordance with the regulations" immediately after the words "ex-factory selling price".

Amendment of  
section 127C of  
Cap.472.

5. Section 139 of the Customs and Excise Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (h) –

Amendment of  
section 139 of  
Cap.472.

"(i) that in the case of water, remission shall be granted to such extent as the Minister may, by notice in the Gazette, specify."

6. The Fifth Schedule to the Customs and Excise Act is amended –

Amendment of  
the Fifth  
Schedule to  
Cap.472.

- (a) in the manner specified in Part I of the First Schedule to this Act;
- (b) in the manner specified in Part II of the First Schedule to this Act;
- (c) in the manner specified in Part III of the First Schedule to this Act.

### **PART III – VALUE ADDED TAX**

7. The Seventh Schedule to the Value Added Tax Act is amended in paragraph 6(5) by deleting the word "an" appearing after the words "any person to use" and substituting therefor the words "a General Packet Radio Service (GPRS) enabled."

Amendment of  
the Seventh  
Schedule to  
Cap.476.

Amendment of  
Eighth Schedule  
to Cap.476.

**8.** The Eighth Schedule to the Value Added Tax Act is amended in Part A in the manner specified in the Second Schedule to this Act.

#### **PART IV – INCOME TAX**

Amendment of  
section 2 of  
Cap.470.

**9.** Section 2 of the Income Tax Act is amended by inserting the following new definition in proper alphabetical sequence-

Cap. 485A “real estate investment trust” shall have the meaning assigned to it in the Capital Markets Act;

Cap. 131. “winnings” shall have the meaning assigned to it in the Betting, Lotteries and Gaming Act.

Amendment of  
section 4 of  
Cap.470.

**10.** Section 4 of the Income Tax Act is amended in paragraph (c) by deleting the expression “respect of”.

Amendment of  
section 5 of  
Cap.470.

**11.** Section 5 of the Income Tax Act is amended in subsection (4) --

(a) by inserting the words “or his beneficiaries” immediately after the words “full time employee” wherever they occurs in paragraph (b);

(b) by deleting paragraph (h) and substituting therefor the following new paragraph –

(h) For the purposes of this subsection –

- (i) “beneficiaries” means the full time employee’s spouse and not more than four children whose age shall not exceed twenty-one years; and
- (ii) “low income employee” means an employee whose taxable income is not subject to tax at the rate of more than twenty per cent under Head B of the Third Schedule to this Act.

**12. Section 10 of the Income Tax Act is amended –**

Amendment to  
section 10 of  
Cap.470.

- (a) in paragraph (c), by inserting the words “and deemed interest” immediately after the word “interest”;
- (b) by inserting the following new paragraph immediately after paragraph (f) –
  - (g) winnings from betting and gaming.

**13. Section 16 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (4)-**

Amendment of  
section 16 of  
Cap.470.

- (5) The Commissioner shall prescribe the form and manner in which the deemed interest shall be computed and the period for which it shall be applicable.

Amendment of  
section 20 of  
Cap.470.

**14.** Section 20 of the Income Tax Act is amended by inserting the following paragraph immediately after paragraph (b) –

“(c) a real estate investment trust”

Amendment to  
section 34 of  
Cap.470.

**15.** Section 34(2) of the Income Tax Act is amended by inserting the following new paragraph immediately after paragraph (h) –

(i) winnings from betting and gaming.

Amendment of  
section 35 of  
Cap.470.

**16.** Section 35 of the Income Tax Act is amended –

(a) in subsection (1) –

- (i) by deleting the words “aircraft or aircraft engines” appearing in paragraph (c) and substituting therefor the words “aircraft, aircraft engines, locomotives or rolling stock”;
- (ii) by inserting the words “and deemed interest” immediately after the word “interest” wherever it occurs in paragraph (e).
- (iii) by inserting the following new paragraph immediately after paragraph (i) –

(j) winnings from betting and gaming;



(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (h) –

(i) winnings from betting and gaming.

**17.** The Income Tax Act is amended by inserting a new section immediately after section 41 as follows -

Insertion of  
section 41A in of  
Cap.470.

Agreements for  
exchange of  
information.

**41A.** The Minister may, by notice in the Gazette, from time to time declare that arrangements specified in the notice, being arrangements made with the government of any country with the view of exchanging information relating to income tax or other taxes of a similar character imposed by the laws of that country, shall, notwithstanding anything to the contrary in this Act or any other written law, have effect in relation to income tax, and that notice shall, subject to the provisions of this section, have effect accordingly.

**18.** The Income Tax Act is amended in Part VIII, by inserting the following new section immediately before section 52-

Insertion of new  
section 51A in  
Cap.470.

Returns, records,  
etc. to be in  
official  
languages.

**51A.(1)** For the purposes of this Act –

(a) any return, record or other document required to be kept or produced shall be in either of the official languages;

- (b) the unit of currency in any such return, record or other document shall be the Kenya shilling.

(2) In subsection (1)(a), the expression “official languages” shall have the meaning assigned to it in Article 7 of the Constitution.

Amendment of  
section 52B of  
Cap.470.

**19.** Section 52B of the Income Tax Act is amended by deleting the proviso to subsection (1) and replacing it with the following new proviso –

“Provided that an employee who is employed by or renders service to one employer shall not be required to give a return under paragraph (a) –

(i) if the employee had no income chargeable to tax for that year of income other than emoluments, and

(ii) the tax payable in respect of those emoluments had been recovered by deduction under section 37.”

Amendment of  
section 72C of  
Cap.470.

**20.** Section 72C of the Income Tax Act is amended in subsection (2), by deleting the words “five hundred thousand shillings” appearing in paragraphs (a) and (b) of the proviso and substituting therefor the words “one million five hundred thousand shillings”.

Amendment of  
section 132 of  
Cap.470.

**21.** Section 132 of the Income Tax Act is amended by adding the following new subsection immediately after subsection (7) -

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(8) Without prejudice to any penalty that may be imposed under subsection (7), the Commissioner may, forthwith, register and issue a personal identification number to a person who fails to obtain such number as required by the Commissioner under subsection (2).

**22.** The Third Schedule to the Income Tax Act is amended –

Amendment of  
the Third  
Schedule of  
Cap.470.

(a) in paragraph 3 –

(i) by inserting the words “and deemed interest” immediately after the words “and interest” appearing in subparagraph (e) (i);

(ii) by inserting the following new subparagraph immediately after subparagraph (1) –

(m) in respect of winnings from betting and gaming, twenty percent.

(b) in paragraph 5, by inserting the following new subparagraph immediately after subparagraph (i) –

(j) in respect of winnings from betting and gaming, twenty percent:

Provided that the tax so deducted shall be final.

## PART V – MISCELLANEOUS

Amendment of  
First Schedule.

**23.** Part I of the First Schedule to the National Assembly (Remuneration) Act is amended in the third column under the title “Parliamentary Responsibilities Allowance” -

- (a) by inserting the figure “2,400,000.00” against the entries “Deputy Speaker” and “Member of the Chairman’s Panel respectively; and
- (b) by inserting the “1,200,000.00” against the entry “Parliamentary Service Commissioner”.

Amendment of  
Second Schedule  
of Cap. 5.

**24.** The Second Schedule to the National Assembly Remuneration Act is amended in item 5 by deleting the words “A severance allowance at the rate of Ksh.300,000 for every year in service” appearing in the second column and substituting therefor the words “A severance allowance at the rate of thirty-one per centum of the salary specified in the second column of the First Schedule for every year in service”.

Amendment of  
section 25 of  
Cap 258.

**25.** Section 25 of the National Social Security Fund Act is amended by deleting paragraph (e).

Amendment of  
Section 16 of  
Cap.267

**26.** Section 16 of the Rating Act is amended –

- (a) in subsection (3) by inserting the word “simple” after the words “The rating authority shall charge”: and

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- (b) by inserting the following new sub-section after sub-section (3) –

“(4) Notwithstanding sub-section (3), the interest charged shall not exceed the principal amount of the rate owing.”

27. Section 2 of the Traffic Act is amended by inserting the following new definitions in proper alphabetical sequence-

Amendment to section 2 of Cap 403.

“registration certificate” means a certificate issued under section 6(5);

“deregistration certificate” means a deregistration certificate issued under section 6A(2);

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“computerized motor vehicle registration system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to registration records of motor vehicles and trailers, the licensing of drivers, and the keeping of such records in relation thereto as are required by this Act.

28. The Traffic Act is amended by inserting new sections immediately after section 5 as follows-

Insertion of sections 5A, 5B, 5C, 5D, and 5E in Cap 403.

Use of  
information  
technology.

**5A.** (1) Subject to such conditions as the Registrar may prescribe, registration, licensing or any formalities and procedures under this Act may be carried out by use of information technology.

(2) For the purposes of subsection (1), the Registrar may, by notice in the Gazette, specify –

(a) the procedures which may be carried out by use of information technology; and

(b) the persons authorized to carry out such formalities using information technology.

Application to  
use of  
computerized  
motor vehicle  
registration  
system.

**5B.**(1) A person who wishes to be registered as a user of a computerized motor vehicle registration system may apply in writing to the Registrar who may-

(a) grant the application subject to such conditions as he may impose; or

(b) reject the application.

(2) A person shall not access, transmit to, or receive information from, a computerized motor vehicle registration system unless that person is a registered user of the system.

**5C.** The Registrar may, at any time, cancel the registration of a registered user of a computerized motor vehicle registration system if satisfied that the user has –

Cancellation of  
registration of  
registered user.

- (a) failed to comply with a condition of registration imposed by the Registrar under section 3;
- (b) failed to comply with, or has acted in contravention of, any condition under the rules; or
- (c) been convicted of an offence under this Act relating to improper access to, or interference with a motor vehicle computerized system.

**5D.** (1) A person commits an offence if the person –

Unauthorized  
access to  
computerized  
Motor vehicle  
registration  
system.

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any computerized motor vehicle registration system; or
- (b) having lawful access to any computerized motor vehicle registration system, knowingly uses or discloses information obtained from such system for a purpose that is not authorized; or

- (c) knowing that he is not authorized to do so, receives information obtained from any computerized motor vehicle registration system and uses, discloses, publishes, or otherwise disseminates such information.

(2) A person who commits an offence under subsection (1) shall be liable on conviction-

- (a) in the case of an individual, to imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

Interference with  
computerized  
motor vehicle  
registration  
system.

**5E** A person commits an offence if the person knowingly-

- (a) falsifies any record or information stored in any computerized motor vehicle registration system;
- (b) damages or impairs any computerized motor vehicle registration system; or



- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a computerized motor vehicle registration system is held or stored, otherwise than with the permission of the Registrar,

and shall be liable on conviction to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

**29.** The Traffic Act is amended by inserting the following new section immediately after section 6-

Insertion of section 6A in Cap 403.

Relocation of motor vehicles.

**6A. (1)** Where the owner of a motor vehicle intends to move the motor vehicle permanently to a place outside Kenya, the owner shall forthwith, return the identification plates and registration certificate issued under this Act in respect of the motor vehicle to the Registrar for cancellation.

(2) The Registrar shall, after cancelling the registration certificate returned under subsection (1), issue a deregistration certificate to the registered owner in such form as may be prescribed.

**30.** Section 9 of the Traffic Act is amended -

Amendment of section 9 of Cap 403.

- (a) by inserting a new subsection immediately after subsection (1) as follows-

(2) Upon the transfer of ownership of a motor vehicle or trailer, the registered owner thereof shall, within seven days from the date of the transfer, inform the Registrar in the prescribed form of the name, postal and email addresses and telephone number of the new owner and shall deliver the registration certificate in respect of such vehicle to the new owner, who shall forward the registration certificate together with the prescribed fee to the Registrar, whereupon the vehicle shall be registered in the name of the new owner:

Provided that, where in any case the registered owner of a motor vehicle fails to comply with the provisions of this subsection, the Registrar may, on being satisfied that the registered owner has died, left Kenya, cannot be traced, or has refused to comply with the provisions of this subsection, cause the vehicle to be registered in the name of the new owner on payment of the prescribed fee.

- (b) in subsection (3), by deleting the expression “subsection (1)” and substituting therefor the expression “ subsections (1) and (2)”;
- (c) in subsection (5), by inserting the expression “(2)” immediately after the expression “subsection (1)”.

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**31.** The Stamp Duty Act is amended by adding the following proviso at the end of section 5 –

Amendment of  
section 5 of  
Cap.480.

“Provided that the Government shall not charge stamp duty twice where a person moves a mortgage from one bank to another.”

**32.** Section 2 of the Capital Markets Act is amended by inserting the following new definition in proper alphabetical sequence –

Amendment of  
section 2 of  
Cap.485A

“real estate investment trust” mean an arrangement in respect of real estate or interest in real estate of any description, structured in accordance with the rules prescribed by the Authority to enable a person taking part in the arrangement, whether by becoming an owner of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the real estate or interest in the real estate or sums paid out of such profits of income.

**33.** The Insurance Act is amended by inserting the following new section immediately after section 30 –

Insertion of  
section 30A in  
Cap.487.

Opening of a  
branch.

**30A.(1)** An insurer registered under this Act wishing to open a branch or a new place of business in Kenya, or to change the location of a branch, or an existing place of business, shall apply to the Authority for approval to do so.

(2) In considering an application under subsection (1), the Authority shall take into account –

- (a) the history and financial condition of the insurer;
- (b) the adequacy of the capital base and the structure of the insurer;
- (c) the viability and earning prospects of the branch; and
- (d) such other matter as may have a bearing on the insurer or the proposed branch.

(3) There shall be payable, in respect of every application under subsection (1), a fee of twenty thousand shillings.

(4) For the purposes of this section “branch” means any permanent premises, other than its head office, at which an insurer transacts business in Kenya.

Insertion of  
section 67G in  
Cap.487.

**34.** The Insurance Act is amended by inserting a new section immediately after section 67F as follows –

Power to  
protect the  
assets of an  
insurer.

**67G.** (1) The Authority may, for the purpose of protecting the interests of the policy holders, assume control of the whole or part of the insurer's assets, and shall register any instrument under the relevant law or take any other appropriate action it may deem necessary.

(2) The Authority shall hold the directors of the insurer to be jointly and severally liable for the recovery of the assets under subsection (1), where it establishes that the assets of the insurer have been misappropriated.

**35.** Section 113 of the Insurance Act is amended in subsection (1) by deleting the words "Minister, through the Commissioner" appearing in paragraph (b) and substituting therefor the word "Authority".

Amendment of  
section 113 of  
Cap.487.

**36.** Section 114 of the Insurance Act is amended by deleting the word "Minister" wherever it occurs and substituting therefor the word "Authority".

Amendment of  
section 114 of  
Cap.487.

**37.** Section 115 of the Insurance Act is amended by deleting the word "Minister" wherever it occurs and substituting therefor the word "Authority".

Amendment of  
section 115 of  
Cap.487.

**38.** Section 116 of the Insurance Act is amended by deleting the word "Minister" appearing at the beginning of the section and substituting therefor the word "Authority".

Amendment of  
section 116 of  
Cap.487.

**39.** Section 117 of the Insurance Act is amended by deleting the word "Minister" wherever it occurs and substituting therefor the word "Authority".

Amendment of  
section 117 of  
Cap.487.

Amendment of  
section 118 of  
Cap.487.

**40.** Section 118 of the Insurance Act is amended by deleting the word “Minister” wherever it occurs and substituting therefor the word “Authority”.

Amendment of  
section 8A of  
Cap. 488.

**41.** Section 8A of the Banking Act is amended by inserting the following new subsection immediately after subsection (4) –

(5). Notwithstanding the provisions of this section, the Central Bank may, subject to such conditions or limitations as it may prescribe, permit an institution to provide such services as it may, in any particular case, specify, to its customers who are outside the country through banking institutions located outside Kenya.

Amendment to  
section 13 of  
Cap. 488.

**42.** Section 13 of the Banking Act is amended in subsection (3) by inserting a comma and the words “other body corporate” immediately after the word “company” wherever it appears.

Amendment to  
section 31 of  
Cap. 488.

**43.** Section 31 of the Banking Act is amended-

(a) in subsection (3) –

(i) by deleting the words “and institutions licensed under this Act” appearing in paragraph (b) and substituting therefor the words “institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006”;

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- (ii) by deleting the words “institutions licensed under this Act” appearing in paragraph (c) and substituting therefor the words “institutions licensed under this Act and intuitions licensed under the Microfinance Act, 2006”;
- (b) in subsection (4), by inserting the words “and institutions licensed under the Microfinance Act, 2006” immediately before the words “and disseminating”.
- (c) in subsection (5), by inserting the following new paragraph immediately after paragraph (b) –

(c) a deposit-taking microfinance institution licensed under the Microfinance Act, 2006.

44. Section 33 of the Banking Act is amended in subsection (4) by deleting the word “Part” and substituting therefor the word “Act”.

Amendment of  
section 33 of  
Cap. 488.

Amendment of  
section 11 of  
Cap.491.

**45.** Section 11 of the Central Bank of Kenya Act is amended –

(a) in subsection (1), by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs –

(i) a Chairperson;

(ii) a Governor;

(b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) The directors appointed under paragraph (d) of subsection (1) shall be appointed by the President with the approval of Parliament and shall hold office for a period of four years but shall be eligible for re-appointment for one further term of four years.

(c) in subsection (5), by deleting the words “Governor, Deputy Governor” and substituting therefor the words “Chairperson, Governor”;

(d) in subsection (6) by deleting the words “Governor, the Deputy Governor” and substituting therefor the words “Chairperson, the Governor”.



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**46.** Section 12 of the Central Bank of Kenya Act is amended –

Amendment of  
section 12 of  
Cap.491

(a) in subsection (1), by deleting the words “Governor, as Chairman of the Bank” and substituting therefor the word “Chairperson”;

(b) by inserting the following new subsections after subsection (1) -

(1A) The Chairperson shall preside at all meetings of the Board.

(1B) In the absence of the Chairperson at a meeting, the members present shall elect one of the members appointed under paragraph (d) of section 11(1) to preside at that meeting of the Board.

(c) in subsection (2), by deleting the words “Governor or the Deputy Governor” and substituting therefor the words “Chairperson, the Governor”.

(d) in subsection (3), by deleting the words “Chairman or the Deputy Chairman” and substituting therefor the words “Chairperson or the person”.

**47.** Section 13 of the Central Bank of Kenya Act is amended by inserting the following new subsections immediately before subsection (1) –

Amendment of  
section 13 of  
Cap.491.

- (1) There shall be a Governor who shall be appointed by the President through a transparent and competitive process and with the approval of Parliament.
- (2) The Governor shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.

Repeal and  
replacement of  
section 13B of  
Cap.491.

**48.** The Central Bank of Kenya Act is by repealing section 13B and replacing it with the following new section –

Deputy  
Governors.

**13B.(1)** There shall be two Deputy Governors who shall be appointed by the President through a transparent and competitive process and with the approval of Parliament.

(2) The Deputy Governors shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.

(3) The Deputy Governors shall perform such functions as the Governor may from time to time assign to them.

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(4) The Board shall appoint one of the Deputy Governors to act in the office of Governor whenever –

(a) the position of Governor falls vacant in the period before a substantive appointment is made; or

(b) the Governor is temporarily absent from office.

(5) A Deputy Governor appointed under subsection (4) shall, during the period of appointment, exercise all the powers and perform all the functions conferred on the Governor under this Act under any other law.

**49.** Section 33B of the Central Bank of Kenya Act is amended by deleting subsection (6) and substituting therefor the following new subsection -

Amendment of section 33B of Cap. 491.

(6) A licence issued under this section shall, unless earlier revoked, expire on the 31st December next following the date of issue:

Provided that where an application for renewal is made under section 33C, the licence shall be deemed to continue in force until the application for renewal is determined.

**50.** The Central Bank of Kenya Act is amended by inserting a new section immediately after section 36 as follows –

Insertion of section 36A in Cap.491.

Publication and  
sharing of  
information.

**36A.** (1) The Central Bank shall publish in the Gazette, the Central Bank website and two daily newspapers of national circulation the following information –

- (a) the weighted average lending and deposit rates for all banks and financial institutions;
- (b) the interest rate spread and its composition;
- (c) a simplified version of the balance sheets and income statements.

(2) Notwithstanding the provisions of this section, a bank shall disclose any positive or negative information of its customers to the licensed credit reference bureaus, where such information is reasonably required for the discharge of the functions of the banks and the licensed credit reference bureaus.

Insertion of  
section 36B of  
Cap.491.

**51.** The Central Bank of Kenya Act is amended by inserting a new section immediately after section 36A as follows –

Reports to  
Parliament.

**36B.** The Central Bank shall, on a quarterly basis, make and present to Parliament a report on the key economic and banking sector aggregate.

**52.** Section 27 of the Kenya Information and Communications Act, 1998 is amended in subsection (2) by inserting the following paragraph immediately after paragraph (g) –

Amendment of  
section 27 of Act  
No.2 of 1998

(h) the registration of subscribers to telecommunication services.

**53.** Section 2 of the Microfinance Act, 2006 is amended by inserting the following definition in proper alphabetical sequence –

Amendment of  
section 2 of Act  
No. 19 of 2006.

“control”, in relation to a company or other body corporate, includes-

- (a) to influence, whether directly or indirectly, the composition of at least half of the board of directors of the company or other body corporate;
- (b) to hold, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of fifty per centum or more of the voting power of the company or body corporate, whether alone or with associates or with other associates of the company or other body corporate; or

- (c) the ability, in the opinion of the Central Bank, to exercise a dominant influence over the management or policies of the company or other body corporate on the basis of an agreement or by any other means, regardless of the amount of formal ownership or voting rights.

Amendment of  
section 17 of Act  
No. 19 of 2006.

**54.** Section 17 of the Microfinance Act, 2006 is amended in subsection (1) by inserting the words “or his associates” immediately after the words “single borrower”.

Amendment of  
section 18 of Act  
No. 19 of 2006.

**55.** Section 18 of the Microfinance Act, 2006 is amended by deleting subsection (1) and substituting therefor the following new subsection –

(1) No institution shall grant a loan or credit facility to its associate, or to an officer or member of staff of the institution, or their associates, in excess of such limits as the Central Bank may, by regulations, prescribe.

Amendment of  
section 19 of Act  
No. 19 of 2006.

**56.** Section 19 of the Microfinance Act, 2006 is amended-

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

(1) Subject to subsections (2) and (3), no person shall hold, directly or indirectly, or otherwise have a beneficial interest in, more than twenty-five percent of the shares of an institution.

- (b) by renumbering subsection (5) as subsection (6) and inserting the following new subsection-

(5) Where any share is held by a company or other corporate body, or by a nominee on behalf of another person, the company or other corporate body, or the nominee, as the case may be, shall disclose to the Central Bank the full particulars of the individual person who is the ultimate beneficial owner of the shares.

**57.** Section 21 of the Microfinance Act, 2006 is amended by inserting the following new paragraphs immediately after paragraph (d) -

Amendment of  
section 21 of Act  
No. 19 of 2006.

- (e) was a director or senior officer of an institution that has been liquidated or is under liquidation or statutory management under any written law dealing with banking, insurance, investment or other financial services:

Provided that such a director or senior officer shall not be disqualified unless the Central Bank forms a reasonable opinion that such a director or senior officer may have, directly or indirectly through commission or omission, contributed to the collapse of the financial entity;

- (f) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;
- (g) has taken part in any business practices that, in the opinion of the Central Bank, were fraudulent, prejudicial or otherwise improper or which otherwise discredited his methods of conducting business; or
- (h) has taken part in or been associated with such other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment.

Insertion of a new section 22A in Act No. 19 of 2006.

**58.** The Microfinance Act, 2006 is amended by inserting the following section immediately after section 22-

Assessment of officers.

**22A.** (1) Notwithstanding any other provision of this Act, the Central Bank may, from time to time, where it deems it necessary to do so, carry out an assessment of the professional and moral suitability of a person managing or controlling an institution.



(2) An assessment under this section shall be in accordance with such criteria as may be prescribed.

(3) Where, upon an assessment under this section, the Central Bank is satisfied as to the professional and moral suitability of the person managing or controlling an institution, it shall so certify in writing to the institution.

(4) A person who, upon an assessment under this section, is not certified by the Central Bank as fit and proper to manage or control an institution, shall be deemed to be disqualified from holding office and shall cease to hold office.

**59.** Section 34 of the Microfinance Act, 2006 is amended-

Amendment of  
section 34 of Act  
No. 19 of 2006.

Cap. 488

- (a) in subsection (3A), by inserting the words  
“and institutions licensed under the  
Banking Act” immediately after the words  
“licensed under this Act”;

(b) in subsection (4) –

(i) by deleting the word “and” appearing immediately after the words “Central Bank”; and

Cap.488. (ii) by inserting the word “and institutions licensed under the Banking Act” immediately after the words “licensed under this Act”;

(c) in subsection (5) by deleting all the words appearing immediately after the words “clients of institutions” and substituting therefor the following-

Cap. 488. “licensed under this Act and institutions licensed under the Banking Act, and disseminating the information among such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed”.

Amendment of  
section 45 of Act  
No. 19 of 2006.

**60.** Section 45 of the Microfinance Act, 2006 is amended by-

(a) inserting the following new subsection immediately after subsection (1) -

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(2) Where a company registered under the Companies Act as a deposit-taking micro finance institution fails to acquire a licence to operate under this Act within a period of one year from the date of such registration, the company shall forthwith cease the use of the words "deposit taking microfinance" or the acronym "DTM" in its name.

- (b) by renumbering the existing subsection (2) as subsection (3).

**61.** The Microfinance Act, 2006 is amended by inserting the following section immediately after section 51-

Insertion of section 51 in the Act No. 19 of 2006.

False  
advertising.

**52.** (1) Any entity, institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which -

- (a) falsely represents that the entity, institution or person is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or
- (b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

commits an offence.

(2) The Central Bank may, at any time, direct an institution to withdraw, amend or refrain from issuing any document to which subsection (1) applies.

**FIRST SCHEDULE**

Amendment of the Fifth Schedule to the Customs and Excise Act, Cap.472

**FIFTH SCHEDULE****PART I**

1. Delete the following tariff numbers, descriptions and rates of excise duty thereof –

<b><i>Tariff No.</i></b>	<b><i>Goods Description.</i></b>	<b><i>Rate of Duty.</i></b>
2203.00.10	Stout and porter	Sh.65 per litre
2203.00.90	Other beer made from malt	Sh.65 per litre
2206.00.10	Cider	Sh.55 per litre
2206.00.20	Opaque beer	Sh.55 per litre
2206.00.90	Other fermented beverages	Sh.55 per litre
2204.10.00	Sparkling wine of fresh grapes including fortified wines	Sh.70 per litre or 35%
2204.21.00	Other wine grape must with fermentation prevented or arrested by the addition of alcohol in containers holding 2 litres or less	Sh.70 per litre or 35%

<b><i>Tariff No.</i></b>	<b><i>Goods Description.</i></b>	<b><i>Rate of Duty.</i></b>
2204.29.00	Other wine grape must with fermentation prevented or arrested by the addition of alcohol in containers holding more than 2 litres	Sh.70 per litre or 35%
2204.30.00	Other grape must	Sh.70 per litre or 35%
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of 2 litres or less	Sh.70 per litre or 35%
2205.90.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of more than 2 litres.	Sh.70 per litre or 35%
2710.19.22	Illuminating Kerosene (IK)	Per . 1000 litre @ 20°C Sh.5,044.00

2. Insert the following tariff numbers, descriptions and rates of excise duty thereof -

<b><i>Tariff No.</i></b>	<b><i>Goods Description.</i></b>	<b><i>Rate of Duty.</i></b>
2203.00.10	Stout and porter	Sh.70 per litre or 40% of RSP
2203.00.90	Other beer made from malt	Sh.70 per litre or 40% of RSP
2206.00.10	Cider	Sh.70 per litre or 40% of RSP
2206.00.20	Opaque beer	Sh.70 per litre or 40% of RSP
2206.00.90	Other fermented beverages	Sh.70 per litre or 40% of RSP

<i><b>Tariff No.</b></i>	<i><b>Goods Description.</b></i>	<i><b>Rate of Duty.</b></i>
2204.10.00	Sparkling wine of fresh grapes including fortified wines, grape must	Sh.80 per litre or 40% of RSP
2204.21.00	Other wine in containers holding 2 litres or less	Sh.80 per litre or 40% of RSP
2204.29.00	Other wine in containers holding more than 2 litres	Sh.80 per litre or 40% of RSP
2204.30.00	Other grape must	Sh.80 per litre or 40% of RSP
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of 2 litres or less	Sh.80 per litre or 40% of RSP
2205.90.00	Vermouth and other wines of such fresh grapes flavoured with plants or aromatic substances, in containers of more than 2 litres	Sh.80 per litre or 40% of RSP

(RSP means Retail Selling Price)

**PART II**

Delete the existing Part II and substitute therefor the following new Part II

Excise duty in respect of cigarettes shall be as shown hereunder --

<b>Description</b>	<b>Rate of Excise Duty</b>
Cigarettes	Sh.1200 per mille or 35% of retail selling price.

**PART III**

Insert the following new item (6) immediately after item (5) –

6. Excise duty on pre-mixed alcoholic beverages of tariff No 2208.90.90 (e.g. Ready to Drink) of strength not exceeding 10 percent by volume of alcohol shall be Shs.70 per litre or 40% of the retail selling price.



## **SECOND SCHEDULE**

(s.8)

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Amendment of the Eighth Schedule to the Value Added Tax Act Cap 476

## **EIGHTH SCHEDULE**

Insert the following new clause 29 in Part A of the Eighth Schedule –

29. “All goods, including materials, supplies, equipment and machinery procured or sourced by the Rural Electrification Authority for the implementation of the Rural Electrification Programme”.

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