

Kenya Gazette Supplement No. 90 (Acts No. 8)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2008

NAIROBI, 19th December, 2008

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THE FINANCE ACT

No. 8 of 2008

Date of Assent: 15th December, 2008

Date of Commencement: See Section 1

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, 2008 and shall come into operation, or be deemed to have come into operation, as follows-

Short title and commencement.

(a) sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11(a), 11(d), 12, 13, 14, 15, 16, 17, 20(a), 20(c), 22, 23(a), 23(c), 24, 25, 26, 27, 28, 29(a), 30, 31, 33, 34, 35, 37, 38, 39, 40, and 41, on the 13th June, 2008;

(b) sections 18, 20(b) and 36 on the 1st October, 2008;

(c) sections 19 and 21 on the 1st July, 2008;

(d) sections 23(b), 29(b), 32, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on the 1st January, 2009.

(dd) sections 2A, 7A, 11(b), 11(c) and 11(e), on the 1st December, 2008.

PART II – CUSTOMS AND EXCISE

2. Section 2 of the Customs and Excise Act is amended -

Amendment of section 2 of Cap.472.

(a) in the definition of “beer”, by deleting paragraph (a) and substituting therefor the following new paragraph -

“(a) any beer made or brewed by any person and which is not offered for, or intended to be offered for sale;”

(b) by inserting the following new definition in proper alphabetical sequence-

“excise stamp” means an excise stamp prescribed by the Commissioner under section 116B.

**Amendment
to section 90 of
Cap. 472.**

2A. The Customs and Excise Act is amended in Section 90 by inserting the following proviso immediately after subsection (2) –

Provided that the Commissioner may license a person to manufacture plastic bags of not less than-

- (a) 10 microns, if satisfied that such bags are for export; or
- (b) 20 microns, if satisfied that such bags are for industrial use

**Amendment
to section 96
of Cap.472.**

3. Section 96 of the Customs and Excise Act is amended by deleting subsection (1) and substituting therefor the following new subsections -

(1) A licensee shall keep at his factory and in the prescribed manner all records which may be required under the provisions of this Act and shall make therein the prescribed entries relating to the manufacture, storage and delivery of excisable goods and materials.

(1A) Every entry into a record kept pursuant to subsection (1) shall –

(a) in the case of a manual record, be made legibly in ink and, subject to section 112, shall not be altered in any manner other than by cancellation, that is to say, by drawing a single line in ink through the incorrect entry so as to allow the original entry to remain legible, or by amendment, that is to say, by so drawing a single line through the incorrect entry and making a correcting entry above the entry so cancelled; and

(b) in the case of an electronic or other form of record, be made in such manner as may be prescribed, and shall not be altered except in the prescribed manner.

4. The Customs and Excise Act is amended by inserting the following new section immediately after section 116A -

Insertion of
section 116B
in Cap.472

**Excise
stamps.**

116B(1) The Minister may, by notice in the Gazette, specify the excisable goods to which the requirement for the affixing of excise stamps under this section applies.

(2) The Commissioner shall, by notice in the Gazette, specify the types and descriptions of excise stamps to be affixed on the goods specified under subsection (1).

(3) No person shall –

(a) import any goods specified in accordance with subsection (2) unless such person is registered with the Commissioner; or

(b) offer such goods for sale or free distribution or use them for any other purpose unless there is affixed on the goods the prescribed excise stamps.

(4) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) A licensee or importer who is convicted of an offence under subsection (4) shall, in addition to the penalty prescribed under that subsection, be liable to have his licence cancelled, or registration under this section revoked, as the case may be.

Amendment of section 117 of Cap.472.

5. Section 117 of the Customs and Excise Act is amended in subsection (1) by -

(a) deleting the expression “fourth column of that” appearing in paragraph (d);

(b) deleting the proviso appearing immediately after paragraph (d).

Amendment of section 127E of Cap.472

6. Section 127E of the Customs and Excise Act is amended by deleting the words “under section 127B” and substituting therefor the words “on disputes arising from the decisions of the Commissioner or a person authorised by him, or of the proper officer”.

Amendment of section 127F of Cap.472.

7. Section 127F of the Customs and Excise Act is amended in subsection (1) by inserting the following words immediately after the words “Section 127B” -

“and in the case of any other dispute, makes all returns of duty, where applicable, as required and pays the amount of duty shown thereon as being due and payable”.

7A. Section 134 of the Customs and Excise Act is amended in subsection (2) by deleting the words “rectifier’s warehouse and the duty shall be paid by the rectifier” and substituting therefor with the words “rectifier’s or compounder’s warehouse and duty shall be paid by the rectifier or compounder”.

Amendment to section 134 of Cap. 472.

8. The Customs and Excise Act is amended by inserting a new section immediately after section 148 as follows –

Insertion of section 148A in Cap.472.

Remission or refund of duty on bad debts.

148A. Where a person has sold excisable goods or services and has accounted for and paid excise duty on that sale but has not received any payment from the purchaser, he may, after a period of three years from the date of that sale, or where that person has become legally insolvent, apply to the Commissioner for a refund or remission of the excise duty involved, and, subject to the regulations, the Commissioner may refund or remit the excise duty:

Provided that no application for a refund or remission shall be made under this section after the expiry of five years from the date of sale.

9. The Customs and Excise Act is amended by inserting a new section immediately after section 149 as follows –

Insertion of section 149A in Cap.472.

Rebate or refund on converted excisable goods or plastic bags for packing..

149A (1) Where excisable goods on which duty has been paid are converted into other excisable goods liable to duty, whether specific or *ad valorem*, the excise manufacturer shall be entitled to a rebate of the excise duty previously paid on the converted excisable goods.

(2) Where excise duty has been paid on plastic bags which have subsequently been used for packing by local manufacturers, the excise duty previously paid shall, on application by the manufacturer, be refunded by the Commissioner.

**Amendment of
section 225A
of Cap. 472.**

10. Section 225A of the Customs and Excise Act is amended -

(a) by adding the following proviso at the end of subsection (1) -

“Provided that the penalty chargeable under this subsection shall not exceed one hundred percent of the duty originally due”;

(b) by inserting the following new subsections immediately after subsection (3) -

(4) Notwithstanding any other provision of this section, a person from whom a penalty under subsection (1) is due may apply in writing to the Commissioner for remission of the penalty.

(5) Upon receipt of an application under subsection (4), the Commissioner shall, where the applicant has paid the principal duty in full, suspend the charging of the penalty pending the determination of the application.

(6) The Commissioner may, after consideration of an application under subsection (4), remit the whole or part of the penalty due if satisfied that such remission is justified, and shall make quarterly reports of all remissions granted under this subsection to the Minister:

Provided that where the amount of the penalty exceeds one million five hundred thousand shillings, the remission shall be subject to the approval of the Minister.

(7) Where remission under subsection (6) is not granted, or is granted in respect of only part of the penalty, the balance of the penalty shall become due and payable within ninety days of the determination of the application.

(8) If the balance of a penalty payable under subsection (7) remains unpaid after the expiry of the specified period, a surcharge of two percent per month or part thereof, of the unpaid amount shall forthwith be due and payable.

11. The Fifth Schedule to the Customs and Excise Act is amended -

- (a) in the manner set out in item 1 of the First Schedule;
- (b) in the manner set out in item 1A of the First Schedule;
- (c) in the manner set out in item 2 of the First Schedule;
- (d) in the manner set out in item 3 of the First Schedule;
- (e) in the manner set out in item 4 of the First Schedule.

**Amendment of
the Fifth
Schedule to
Cap.472.**

PART III – VALUE ADDED TAX

**Amendment
of section 2 of
Cap. 476.**

12. Section 2 of the Value Added Tax Act is amended -

(a) in the definition of “hotel”, by deleting paragraph (b);

(b) by deleting the definition of “residential buildings” and substituting therefor the following new definition -

“residential buildings” means the part of any premises used to accommodate persons for residential purposes”.

**Amendment
of section 11
of Cap. 476.**

13. Section 11 of the Value Added Tax Act is amended-

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

“(1) Subject to the regulations and to the other provisions of this section, input tax or tax withheld by a tax withholding agent may, at the end of either the tax period in which the supply, importation or withholding of tax occurred, or the next following tax period, be deducted by the registered person, so far as not previously deducted and to the extent and subject to the exemptions provided under this section, from the tax payable by him on supplies by him (referred to as ‘output tax’) in that tax period:

Provided that no input tax or tax withheld may be deducted -

(a) more than twelve months after that input tax becomes due and payable pursuant to section 13 or the tax is withheld, as the case may be; or

(b) in the case of a motor vehicle or other asset purchased under a hire purchase or a lease financing agreement, more than twelve months after the issuance of a letter of undertaking or a clearance certificate for purposes of the proviso to subsection (1A)";

(b) in subsection (1A) -

(i) by inserting the words "or tax withheld" after the words "No input tax";

(ii) by inserting the following new paragraph immediately after paragraph (a) -

(aa) a withholding tax certificate issued under the Value Added Tax (Tax Withholding) Regulations, 2004.

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(c) in subsection (2), by deleting paragraph (b).

14. Section 15 of the Value Added Tax Act is amended -

**Amendment of
section 15 of
Cap. 476.**

(a) by adding the following proviso at the end of subsection (2) -

"Provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due;"

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

(3) The Commissioner may, upon application by a person from whom any interest is due under subsection (1) or (2), grant remission of the whole or part of the interest due, if satisfied that such remission is justified, and shall make quarterly reports to the Minister on the remission granted under this subsection:

Provided that where the amount of interest due exceeds one million five hundred thousand shillings, the remission shall be subject to the prior written approval of the Minister.

(c) by inserting the following new subsections immediately after subsection (3) -

(4) Upon receipt of an application under subsection (3), the Commissioner shall, where the applicant has paid the principal tax in full, suspend the charging of the interest pending the determination of the application.

(5) Where the remission under subsection (3) is not granted or is granted in respect of only part of the interest, the balance of the interest shall become due and payable within ninety days of the determination of the application.

(6) If the balance of the interest payable under subsection (5) remains unpaid after the expiry of the specified period, a surcharge at the rate of two percent per month or part thereof, shall forthwith be due and payable.

15. Section 19A of the Value Added Tax Act is amended by inserting the following new proviso immediately after subsection (2) –

**Amendment
of section 19A
of Cap. 476**

Cap. 470 Provided that no tax shall be withheld from suppliers who are subject to turnover tax as provided under section 12C of the Income Tax Act, upon presentation of a valid turnover tax registration certificate.

16. Section 23 of the Value Added Tax Act is amended in subsection (3) by inserting the words “and taxable services” immediately before the word “imported” appearing in paragraph (c).

**Amendment of
section 23 of
Cap. 476**

17. Section 25 of the Value Added Tax Act is amended -

**Amendment of
section 25 of
Cap. 476.**

(a) by adding the following proviso at the end of subsection (2) -

“Provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due”;

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

(3) The Commissioner may, upon application by a person from whom any interest is due under subsection (2), grant remission of the whole or part of the interest due, if satisfied that such remission is justified, and shall make quarterly reports to the Minister of all the remissions granted under this subsection:

Provided that where the amount of the interest exceeds one million five hundred thousand shillings, remission shall be subject to the prior written approval of the Minister.

(c) by inserting the following new subsections after subsection (3) –

(4) Upon receipt of an application under subsection (3), the Commissioner shall, where the applicant has paid the principal tax in full, suspend the charging of the interest pending the determination of the application.

(5) Where remission under subsection (3) is not granted, or is granted in respect of part only of the interest, the balance of the interest shall become due and payable within ninety days of the determination of the application.

(6) Where the balance of the interest payable under subsection (5) remains unpaid after the expiry of the specified period, a surcharge at the rate of two percent per month or part thereof shall forthwith be due and payable.

**Insertion of
new section 59
of Cap. 476.**

18. The Value Added Tax Act is amended by inserting the following section immediately after section 58 as follows -

Agents. 59.(1) Where under the provisions of this Act a registered person is required to perform any act, that act may be performed on his behalf by an agent authorised by him.

(2) Without prejudice to any provision under this Act, the Minister may make regulations prescribing conditions for any person authorised to act as an agent under this section.

19. The Second Schedule to the Value Added Tax Act is amended in the manner specified in the Second Schedule to this Act.

Amendment of the Second Schedule to Cap. 476.

20. The Third Schedule to the Value Added Tax Act is amended -

Amendment of the Third Schedule to Cap. 476.

(a) in paragraph 1, by inserting the words "Postal Corporation of Kenya" immediately after the words "provided by";

(b) in paragraph 18 by deleting subparagraph (a);

(c) by inserting a new paragraph immediately after paragraph 21 as follows -

22. The supply of airtime by any person other than by a provider of cellular mobile telephone services or wireless telephone services.

21. The Fifth Schedule to the Value Added Tax Act is amended in the manner specified in the Third Schedule to this Act.

Amendment of the Fifth Schedule to Cap. 476.

22. The Eighth Schedule to the Value Added Tax Act is amended in Part B by inserting the words "or leased, hired or chartered" immediately after the word "generally".

Amendment of the Eighth Schedule to Cap.476

PART IV – INCOME TAX

23. Section 2 of the Income Tax Act is amended –

Amendment of section 2 of Cap.470.

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

“training fee” means a payment made in respect of a business or user training services designed to improve work practices and efficiency of an organisation.

(b) in the definition of “wife’s self-employment income”, by inserting the following immediately after the expression “section 3(2)(a)(i)” -

“and any income chargeable under section 3(2)(a)(iii) or section 3(2)(b)”;

(c) in the definition of “venture company”, by substituting the expression “venture capital enterprise” for the expression “venture company”.

**Amendment
of section 4A
of Cap.470.**

24. Section 4A of the Income Tax Act is amended -

(a) in subsection (1), by deleting the words “retained earnings” appearing in paragraph (ii) of the proviso;

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

“(1A) For the avoidance of doubt, accumulated losses shall be taken into account in computing the amount of revenue reserves”.

**Amendment
of section 5 of
Cap.470.**

25. Section 5 of the Income Tax Act is amended-

(a) in subsection (3) -

(i) by deleting paragraph (a) and substituting therefor the following new paragraph-

“(a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer”;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph-

“(b) in the case of a whole time service director, an amount equal to the higher of fifteen per centum of the gains or profits from his employment, excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer”;

(b) in subsection (4) –

(i) by deleting paragraph (f) and substituting therefor the following new paragraph-

(f) the value of meals served to low income employees in a canteen or cafeteria operated or established by the employer (whether the meals are supplied by the employer or not) within his premises, subject to such conditions as the Commissioner may specify;

(ii) by inserting the following paragraph immediately after paragraph (f) –

(ff) For the purposes of this subsection, “low income employee” means an employee whose taxable income is not subject to tax at the rate of more than twenty percent under Head B of the Third Schedule to this Act.

(c) in subsection (5), by inserting the expression “and the value of benefit determined under subsection (2B)” immediately after the expression “subsection (3)”;

(d) in subsection (6) -

(i) by inserting the words “paragraph (a) of the proviso to” immediately before the expression “subsection (5)”;

(ii) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) the benefits chargeable shall accrue where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Act and shall be deemed to have accrued to the employee at the end of the vesting period.

Cap.485A.

**Amendment
of section 7 of
Cap.470.**

26. Section 7 of the Income Tax Act is amended by deleting subsection (3) and substituting therefor the following new subsection -

(3) A dividend received by the financial institutions specified in the Fourth Schedule shall be deemed to be income chargeable to tax in accordance with this section.

27. Section 7A of the Income Tax Act is amended by deleting the words "venture company" appearing in subsection (7), and substituting therefor the words "venture capital enterprise".

**Amendment
of section 7A
of Cap.470.**

28. Section 10(a) of the Income Tax Act is amended by inserting the words "or training fee" immediately after the words "professional fee".

**Amendment
of section 10
of Cap.470.**

29. Section 12C of the Income Tax Act is amended -

**Amendment
of section 12C
of Cap.470.**

(a) by adding the following proviso at the end of subsection (1) -

"Provided that a person who would otherwise be liable to pay tax under this section may, by notice in writing addressed to the Commissioner, elect not to be subject to turnover tax, in which case the other provisions of this Act shall apply to such person.

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

(1A). "Notwithstanding subsection (1), turnover tax shall not apply to-

(a) rental income and management or professional or training fees;

(b) the income of incorporated companies; or

(c) any income which is subject to a final withholding tax under this Act.

**Amendment
of section 15
of Cap.470.**

30. Section 15 of the Income Tax Act is amended in subsection (3)(b) by deleting the words “first three financial institutions” appearing immediately before the words “specified in the Fourth Schedule” and substituting therefor the words “first four financial institutions”.

**Amendment
of section 16
of Cap.470.**

31. Section 16 of the Income Tax Act is amended-

(a) in subsection (2), by adding the following proviso at the end of paragraph (j)-

“Provided that this paragraph shall also apply to loans advanced to the company by a non resident associate of the non-resident company controlling the resident company”;

(b) by inserting a new subsection immediately after subsection (3) as follows-

(4) “For the avoidance of doubt, the expression “revenue reserves” under subsection (2) includes accumulated losses.

**Amendment
of section 19
of Cap.470.**

32. Section 19 of the Income Tax Act is amended-

(a) by deleting subsection (5) and inserting the following new subsections-

(5) The gains or profits for a year of income from the long term insurance business of a resident insurance company, whether mutual or proprietary, shall be the sum of the following -

(a) the amount of the actuarial surplus recommended by the actuary to be transferable from the life fund for the benefit of the shareholders, whether or not it is actually transferred; and

(b) any other amounts transferred from the life fund for the benefit of shareholders; and

(c) thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act.

Cap. 487

(5A) Where the actuarial valuation of the life fund results in a deficit for a year of income and the shareholders are required to inject money into the life fund, the amount of money so transferred shall be treated as a negative transfer for the purposes of subsection (5)(a):

Provided that the amount of the negative transfer shall be limited to the amount of actuarial surplus recommended by the actuary to be transferable from the life fund for the benefit of shareholders in previous years of income, whether or not it was actually transferred.

(b) by deleting subsection (6) and inserting the following new subsections-

(6) The gains or profits for a year of income from the long term insurance business of a non-resident insurance company, whether mutual or proprietary, shall be the sum of the following -

(a) the same proportion of the amount of actuarial surplus recommended by the actuary to be transferable from the life fund for the benefit of the shareholders, whether or not it is actually transferred, as the actuarial liability in respect of its long term insurance business in Kenya bears to actuarial liability in respect of its total long term insurance business; and

(b) the same proportion of any other amounts transferred from the life fund for the benefit of shareholders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and

(c) the same proportion of thirty per cent of management expenses and commissions that are in excess of the maximum amounts allowed by the Insurance Act as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business.

Cap.487.

(6A) Where the actuarial valuation of the life fund results in a deficit for a year of income and the shareholders are required to inject money into the life fund, the proportionate amount of the money so transferred shall be treated as a negative transfer for the purposes of subsection (6)(a):

Provided that the amount of the negative transfer shall be limited to the amount of actuarial surplus recommended by the actuary to be transferable from the life fund for the benefit of the shareholders in previous years of income, whether or not it was actually transferred.

(c) by deleting subsection (9).

33. Section 35 of the Income Tax Act is amended -

**Amendment
of section 35
of Cap.470.**

(a) in subsection (1) by inserting the words "or training fee" immediately after the words "or professional fee" appearing in subsection (1)(a);

(b) in subsection (3)-

(i) by inserting the words "or training fee" immediately after the words "management or professional fee" appearing in paragraph (f); and

(ii) by deleting the words "a finance lease" appearing in paragraph (h) and substituting therefor the words "a lease".

34. Section 37 of the Income Tax Act is amended in subsection (6) -

**Amendment
of section 37
of Cap.470.**

(a) by deleting the introductory portion and substituting therefor the following -

(6) An employer aggrieved by the imposition by the Commissioner of penalty, or by any other decision taken by the Commissioner under this section, may appeal against such imposition or decision to the local committee within thirty days after the service of the notice of the imposition or communication to him of the decision, as the case may be:

(b) in the proviso, by inserting the words “where the appeal relates to the imposition of a penalty” immediately after the words “Provided that”.

**Amendment
of section 39
of Cap.470.**

35. Section 39 of the Income Tax Act is amended -

(a) in subsection (2), by inserting the expression “or income in respect of any activity under section 10(e) of this Act” immediately after the expression “employment income”;

(b) in subsection (3), by inserting the words “or income specified under section 10(e)” immediately after the words “employment income” wherever they occur;

(c) in subsection (4), by inserting the words “or income in respect of any activity under section 10(e)” immediately after the words “employment income”.

**Amendment
of section 54
of Cap.470**

36. Section 54 of the Income Tax Act is amended by inserting the following subsections immediately after subsection (4) -

(4A) Notwithstanding the other provisions of this section, where under the provisions of this Act a registered person is required to perform any act, that act may be performed on his behalf by an agent authorised by him.

(4B) Without prejudice to any provision under this Act, the Minister may make regulations prescribing conditions for any person authorised to act as an agent under subsection (4A).

37. Section 94 of the Income Tax Act is amended -

**Amendment
of section 94
of Cap.470.**

(a) by adding the following proviso at the end of subsection (1) -

“Provided that the interest chargeable under this subsection shall not exceed one hundred per centum of the principal tax owing.

(b) in subsection (4) -

(i) by inserting the words “upon application by a person from whom any interest is due under this section” immediately after the words “the Commissioner may”;

(ii) by deleting the expression “five hundred thousand” wherever it occurs and substituting therefor the expression “one million, five hundred thousand”;

(c) by inserting the following new subsections immediately after subsection (4) -

(5) Upon receipt of an application under subsection (4), the Commissioner shall, where the applicant has paid the principal tax due in full, suspend the charging of the interest pending the determination of the application.

(6) Where remission under subsection (4) is not granted, or is granted in respect of only part of the penalty or late payment interest, the balance shall become due and payable within ninety days of the determination of the application.

(7) Where the balance of a penalty or interest payable under subsection (6) remains unpaid after the expiry of the specified period, a surcharge at the rate of two percent per month or part thereof, of the unpaid amount shall forthwith be due and payable.

**Amendment
to the First
Schedule to
Cap.470.**

38. The First Schedule to the Income Tax Act is amended in paragraph 53, by inserting the words "or lumpsum" immediately after the word "monthly".

**Amendment
to the Second
Schedule to
Cap.470.**

39. The Second Schedule to the Income Tax Act is amended -

(a) in paragraph 32(1) by inserting a proviso at the end of the definition of 'control' as follows -

Provided that in the case of a body corporate, unless otherwise expressly provided for by the articles of association or other documents regulating it, "control" shall mean the holding of shares or voting power of twenty-five percent or more.

(b) by inserting the following new paragraph immediately after paragraph 32 -

33. For the purposes of this Schedule, "hotel" means a hotel which has been classified as such by the Minister for the time being responsible for matters relating to tourism.

40. The Third Schedule to the Income Tax Act is amended in Head B by inserting the words "or training fee", immediately after the words "management or professional fee" appearing in paragraphs 3(a) and 5(f)(i).

**Amendment
to the Third
Schedule to
Cap.470.**

41. The Fourth Schedule to the Income Tax Act is amended by inserting the following new item immediately after the item entitled "A building society registered under the Buildings Societies Act" as follows -

**Amendment
to the Fourth
Schedule to
Cap.470.**

Cap.117 The National Housing Corporation established under the Housing Act.

PART V - MISCELLANEOUS

42. Section 14 of the Agricultural Finance Corporation Act is amended in subsection (1) by adding the words "and accept repayments thereof" at the end of paragraph (a).

**Amendment
of section 14
of Cap. 323.**

Insertion of section 19A in Cap.323.

43. The Agricultural Finance Corporation Act is amended by inserting the following new section immediately after section 19 -

Repayment of Loans.

19A. The repayment of any loan made under subsections 14(1) and 19(1) shall be made to the Corporation or to any branch thereof in accordance with rules made under this Act.

Amendment of section 6 of Cap.403.

44. Section 6 of the Traffic Act is amended by inserting a new subsection immediately after subsection (1) as follows -

(1A). No motor vehicle imported for home use shall be used on a road unless it is registered:

Provided that a commercial vehicle which requires inspection under this section shall be registered within fourteen days of inspection.

Amendment of section 5A of Cap.469.

45. Section 5A of the Kenya Revenue Authority Act is amended in subsection (2) by deleting the expressions "three per centum" and "one million" appearing in paragraph (b) and substituting therefor the expressions "five per centum" and "two million" respectively.

Amendment of Schedule to Cap.480.

46. The Schedule to the Stamp Duty Act is amended by deleting item 29.

Amendment to section 2 of Cap. 485A

47. Section 2 of the Capital Markets Act is amended -

(a) by inserting the following new definitions in their proper alphabetical sequence -

“beneficial owner” means a natural person who, whether alone or with associates, is the ultimate owner or controller of a legal person or arrangement, or, if there is no legal person or arrangement, the person on whose behalf a transaction is being conducted”;

“stockbroking agent” means a person, not being a salaried employee of a stockbroker, who, in consideration of a commission, solicits or procures stockbroking business on behalf of a stockbroker”;

(b) in the definition of “registered venture capital fund”-

(i) by deleting the words “venture capital fund” and substituting therefor the expression “venture capital company”;

(ii) by deleting the words “eighty per cent” and substituting therefor the words “seventy-five percent”;

(c) in the definition of “fund manager”, by deleting the words “venture capital fund” and substituting therefor the words “venture capital company”;

(d) by deleting the words “to subscribe for purchases of securities” appearing at the end of the definition of the expression “information memorandum”;

(e) in the definition of “securities”, by inserting the words “or other similar vehicles, whether established in Kenya or not” immediately after the words “collective investment scheme” appearing in paragraph (d).

Amendment to section 11 of Cap. 485A.

48. Section 11 of the Capital Markets Act is amended-

(a) in subsection (1) by deleting the word “operation” appearing in paragraph (e) and substituting therefor the word “facilitation”;

(b) in subsection (3), by deleting the word “fund” appearing immediately after the words “venture capital” and substituting therefor the word “company”.

Amendment to section 12 of Cap. 485A.

49. Section 12 of the Capital Markets Act is amended in subsection (1) -

(a) by inserting the words “the keeping and” immediately before the words “proper maintenance” in paragraph (c);

(b) by deleting the word “funds” appearing in paragraph (g) and substituting therefor the word “companies”.

Insertion of a new section 13A in Cap. 485A.

50. The Capital Markets Act is amended by inserting a new section immediately after section 13 as follows-

Power of entry and search.

13A(1) The chief executive officer may authorise an officer of the rank of Senior Officer or above to inquire into the affairs of a person under this Act.

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(2) An officer authorised under subsection (1) may, where he is satisfied that a person has committed or is reasonably suspected of committing an offence under this Act in Kenya or elsewhere, apply to a magistrate for a warrant to search the premises of that person.

(3) The magistrate may issue a warrant authorizing the officer to exercise all or any of the following powers-

(a) to enter any premises between sunrise and sunset to search for money, documents or other assets relevant to the inquiry;

(b) to seize money, documents or assets which may be necessary for the inquiry or for the purpose of civil or criminal proceedings and to retain them for as long as they are so required; and

(c) to direct any person who has control over such assets to take any action with respect to such assets as the Authority may reasonably require with a view to protecting the assets until the court determines the appropriate course of action.

(4) In the interest of bank confidentiality, the powers of the officer in respect of any documents held by a banker shall be limited to making copies or extracts therefrom.

51. Section 18 of the Capital Markets Act is amended in subsection (2)-

**Amendment
to section 18
of Cap. 485A.**

(a) by deleting the words “between the closing date and the date of dispatch of share certificates or refund cheques” and substituting therefor the words “between the closing date and the date of dispatch of refund cheques, or, where there is no refund, the date of dispatch of share certificates or crediting of securities accounts”;

(b) deleting the words “for more than seven years” appearing in paragraph (ee) and substituting therefor the words “at the expiry of the applicable statutory limitation period”.

**Amendment
to section 18A
of Cap. 485A.**

52. Section 18A of the Capital Markets Act is amended in subsection (3) by adding the words “or a person deputed by him in writing” at the end of paragraph (c).

**Amendment
to section 23
of Cap. 485A.**

53. Section 23 of the Capital Markets Act is amended in subsection (2) by deleting the word “fund” appearing immediately after the words “registered venture capital” and substituting therefor the word “company”.

**Amendment
of section 24
in Cap.485A.**

54. Section 24 of the Capital Markets Act is amended by inserting a new subsection immediately after subsection (7) as follows -

(8) Any person licensed by the Authority shall not change its shareholders, directors, chief executives or key personnel except with the prior confirmation, in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions imposed by the Authority.

55. Section 25A of the Capital Markets Act is amended-

**Amendment
to section 25A
of Cap. 485A.**

(a) in subsection (1), by deleting the expression "11(3)(d)" appearing immediately after the words "provided under section" and substituting therefor the expression "11(3)(cc)";

(b) in subsection (3), by deleting the words "exercise of the power of restitution" and substituting therefor the expression "make orders under subsection (2)".

56. Section 29 of the Capital Markets Act is amended by inserting the following new subsections immediately after subsection (3)-

**Amendment
to section 29
of Cap. 485A.**

(4) No person who, in relation to a company -

(a) controls or is beneficially entitled directly or indirectly to more than twenty-five percent of the listed share capital or voting right;

(b) is entitled to appoint more than twenty-five percent of the Board of Directors; or

(c) is entitled to receive more than twenty-five percent of the aggregate dividends and interest on shareholders loans to be paid in any given financial year,

shall be appointed as an executive director of that company or to any senior position in the management of the company:

Provided that any person who, before the commencement of this section, is appointed to any position in a company in contravention of this subsection, relinquish such position by the 31st December, 2009.

(5) No individual or corporate person shall, in relation to a company-

(a) control or be beneficially entitled directly or indirectly, to more than twenty-five per cent of the issued share capital or voting rights of a company;

(b) be entitled to appoint more than twenty-five per cent of the Board of Directors; or

(c) be entitled to receive more than twenty-five percent of the aggregate dividends and interest on shareholders loans to be paid in any given financial year:

Provided that the provisions of this subsection shall not apply -

(i) to a corporate entity that is licensed by a banking, insurance, pensions or securities regulator in Kenya or elsewhere;

(ii) where the ownership structure of that corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five percent of its shares, votes, directorship appointments or dividend or interest on shareholder loans.

(6) Any person who, at the commencement of this section, does not meet any of the requirements of subsection (5), shall comply with such requirements by the 31st December, 2009.

(7) For the purposes of subsection (4), (5) and (6), “company” means -

- (a) a stockbrokerage;
- (b) an investment bank; or
- (c) a fund manager.

57. Section 33A of the Capital Markets Act is amended by inserting the following new subsections immediately after subsection (5) -

**Amendment
to section 33A
of Cap. 485A.**

(5A) For the purposes of discharging his responsibilities, a statutory manager shall have to declare a moratorium on the payment by the licensed person of its customers and other person creditors and the declaration of a moratorium shall-

(a) be applied equally and without discrimination to all classes of creditors:

Provided that the statutory manager may offset the liabilities owed by the licensed person to any creditor against any debts owed by that creditor to the licensed person;

(b) suspend the running of time for the purposes of any law of limitation of actions in respect of any claim by a creditor of the licensed person; or

(5B) A moratorium shall cease to apply upon the termination of the statutory manager's appointment, whereupon the rights and obligations of the licensed person and creditors shall, save to the extent provided in paragraph (5A)(b), be the same as if there had been no declaration under the provisions of that subsection:

Provided that a moratorium declared by the statutory manager for payment shall not exceed six months.

**Amendment
of section 34
of Cap.485A.**

58. Section 34 of the Capital Markets Act is amended by deleting subsection (3) and substituting therefor the following new subsection -

(3) Any person convicted of an offence under this Act may be ordered by the court to pay compensation to any person who suffers loss by reason of the offence and the compensation may be either in addition to or in substitution for any other penalty.

**Amendment
to section 35
of Cap.485A.**

59. Section 35 of the Capital Markets Act is amended—

(a) in subsection (1) -

(i) by inserting the words “or by the Investor Compensation Fund Board” immediately after the word “Authority”;

(ii) by inserting a new paragraph immediately after paragraph (f) as follows-

(g) refusing to grant compensation to an investor who has suffered pecuniary loss resulting from failure of a licensed stockbroker or dealer, to meet his contractual obligations or pay unclaimed dividends to a beneficiary who resurfaces;

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

(2) The Capital Markets Tribunal may require the Authority or the Investor Compensation Fund Board to show cause for its action or decision, and may affirm or, after affording the Authority or the Board an opportunity to be heard, set aside such action or decision.

60. The First Schedule to the Companies Act is amended in paragraph 131 of Table A by adding the following proviso -

**Amendment
of First
Schedule to
Cap.486.**

Provided that in the case of a notice of an annual general meeting, such notice may also be given by –

(a) publishing a notice containing a summary of both the annual financial statement and auditors' report, in at least any two local daily newspapers with national circulation for at least two consecutive days; or

(b) sending to every member, a notice through the electronic media containing a summary of both the annual financial statement and auditors' report.

**Amendment
to section 50
of Cap. 487.**

61. Section 50 of the Insurance Act is amended by deleting subsection (10) and substituting therefor the following new subsection -

(10) Where a company or group of related companies referred to in subsection (9) is a bank or financial institution or group of banks or financial institutions, the percentage under that subsection shall be ten percent.

**Amendment
to section 93
of Cap. 487.**

62. Section 93 of the Insurance Act is amended by inserting a new subsection immediately after subsection (1) as follows -

(1A). Every insurer who provides annuities and other insurance investment products shall publish information regarding such annuities and other products on quarterly basis in the manner specified by the Commissioner.

**Amendment
to section 179
of Cap.487.**

63. Section 179 of the Insurance Act is amended -

(a) in subsection (1), by deleting the words "insolvent insurer" and substituting therefor the words "insurer wound up under section 123(2)";

(b) in subsection (4), by inserting a new paragraph immediately after paragraph (f) as follows -

(g) the Permanent Secretary to the Treasury or a person deputed by him in writing.

64. Section 203 of the Insurance Act is amended –

**Amendment
to section 203
of Cap.487.**

(a) in subsection (1), by inserting the words “or where the determination of liability is by a court, within ninety days of such determination” immediately before the proviso;

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

(3) Where the amount of a claim which is due under subsection (1) remains unpaid on expiry of the period prescribed in that subsection, or any extension thereof under subsection (2), a penalty equal to five percent of the unpaid amount shall forthwith become due and payable.

(4) A penalty due under subsection (3) shall be recoverable as though it were a penalty interest charge payable to the Policy Holders’ Compensation Fund Board under section 179, and shall be recovered by the Board in accordance with that section.

(5) If an insurer fails to pay the amount of a claim and any penalty thereon due in accordance with this section, the insurer shall be deemed to be unable to pay his debts under section 123 and liable to be wound up in accordance with that section.

65. The Insurance Act is amended by inserting a new section immediately after section 203 as follows –

**Insertion of
section 204 in
Cap.487.**

**Appointment
of public
prosecutors
Cap.75.**

204. The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for the purposes of cases arising under this Act.

**Amendment
of section 5 of
Cap.488.**

66. Section 5 of the Banking Act is amended –

(a) in subsection (4), by deleting the words “three months of” and substituting therefor the words “the three months immediately preceding”;

(b) in subsection (7), by deleting the words “three months of” and substituting therefor the words “the three months immediately preceding its expiry”;

(c) in subsection (8), by deleting the words “Consolidated Fund” and substituting therefor the words “Central Bank”.

**Amendment
of section 16A
of Cap.488.**

67. Section 16A of the Banking Act is amended in subsection (2), by inserting the words “or a return in the case of an institution carrying out business in accordance with Islamic law” immediately after the words “interest accruing”.

**Amendment
of section 23
of Cap.488.**

68. Section 23 of the Banking Act is amended in subsection (2) by inserting the words “subsidiaries or” immediately before the word “branches”.

**Amendment
to Section 46
of Cap.488.**

69. Section 46 of the Banking Act is amended by renumbering the existing provision as subsection (1) and inserting a new subsection as follows –

(2) Without prejudice to subsection (1), the Central Bank may, on application by an institution or a branch of an institution, if satisfied that it is necessary to do so, authorize the institution or branch to remain closed on such day or part thereof, or on such days as may be specified in the authorization, subject to such terms and conditions as the Central Bank may impose.

70. Section 55 of the Banking Act is amended in subsection (2) –

**Amendment
of section 55
of Cap.488.**

(a) by inserting the words “or credit reference bureaus” immediately after the words “paid by institutions”;

(b) by inserting the words “or credit reference bureau” immediately after the words “an institution”.

71. The First Schedule to the Banking Act is amended in paragraph (a) by inserting the expression “under section 4, or managing or controlling institutions under section 32 A” immediately after the words “an institution”.

**Amendment
of the First
Schedule of
Cap. 488.**

72. The Second Schedule to the Banking Act is amended by inserting a new proviso immediately after paragraph (d) as follows –

**Amendment
of the Second
Schedule to
Cap 488.**

Provided that the provisions of this paragraph shall apply in accordance with the following table -

<i>Compliance Date</i>	<i>Minimum Core Capital, Banks and Mortgage Finance Companies (Kshs. Million)</i>
31 st December, 2009	350
31 st December, 2010	500
31 st December, 2011	700
31 st December, 2012	1,000

**Amendment
of section 4D
of Cap.491.**

73. Section 4D of the Central Bank of Kenya Act is amended in subsection (2) by inserting a new paragraph immediately after paragraph (d) as follows -

(e) the Permanent Secretary to the Treasury, or his representative, who shall be a non-voting member.

**Repeal of
section 31 of
Cap.491.**

74. The Central Bank of Kenya Act is amended by repealing section 31.

**Amendment
of section 47
of Cap.491.**

75. Section 47 of the Central Bank of Kenya Act is amended by deleting subsection (1) and substituting therefor the following new subsection-

(1) For the purposes of regulating the money supply, the Bank may with the approval of the Board -

(a) purchase, hold or sell negotiable securities of any maturity issued by the Government or any other negotiable securities specified by the Bank;

(b) issue or hold Central Bank of Kenya bills and purchase or sell outright or by way of repurchase agreement, Central Bank of Kenya Bills.

(c) accept money as deposit from commercial banks on such terms as may be specified by the Bank.

76. Section 57 of the Central Bank of Kenya Act is amended by renumbering the existing provision as subsection (1) and inserting a new subsection as follows -

**Amendment
of section 57
of Cap.491.**

(2) Without prejudice to the generality of subsection (1), the Bank may, in regulations, prescribe penalties to be paid by authorised dealers who fail or refuse to comply with any guidelines or directions of the Central Bank under this Act, which penalties shall not exceed five hundred thousand shillings in the case of an authorised dealer, or two hundred thousand shillings in the case of a natural person and may prescribe additional penalties, not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

77. Section 6 of the Retirement Benefits Act is amended by adding the following proviso at the end thereof -

**Amendment
to section 6 of
Retirement
Benefits Act
of 1997.**

Provided that no person shall be eligible to be appointed under paragraph (f) if such person is an employee or director of any company, firm or institution where such employment or directorship may lead to a conflict of interest.

**Amendment
to Section 55
of Retirement
Benefits Act
of 1997.**

78. Section 55 of the Retirement Benefits Act is amended by inserting a new subsection (3) immediately after subsection (2) as follows -

(3) Without prejudice to subsection (1), the Authority may from time to time, issue guidelines, practice notes or codes of conduct for better administration of the retirement benefits schemes.

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.

Tariff No.	Goods Description.	Rate of Duty
2203.00.10	Stout and porter	shs.54 per litre
2203.00.90	Other beer made from malt	shs.50 per litre
2204.10.00	Sparkling wine.	shs.85 per litre or 65%
2204.21.00	Other wine, grape must with fermentation prevented or arrested by the addition of alcohol in containers of 2 litres or less.	shs.85 per litre or 65%
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of 2 litres or less.	shs.85 per litre or 65%
2205.90.00	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances in containers of more than 2 litres.	shs.85 per litre or 65%
2206.00.10	Cider	shs.54 per litre
2206.00.20	Opaque beer (e.g. chibuku).	shs.54 per litre
2206.00.90	Other fermented beverages, mixtures of fermented beverages and non-alcoholic beverages not elsewhere specified or included.	shs. 50 per litre
2207.10.00	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher	Shs. 200 per litre or 65%
2208.20.00	Spirits obtained by distilling grape wine or grape marc.	shs.280 per litre or 65%
2208.30.00	Whiskies.	Shs. 280 per litre or 65%

Tariff No.	Goods Description.	Rate of Duty
2208.40.00	Rum and Tafia.	Shs. 280 per litre or 65%
2208.50.00	Gin and Geneva.	Shs. 280. per litre or 65%
2208.60.00	Vodka.	Shs. 280 per litre or 65%
2208.70.00	Liqueurs and cordials.	Shs.280 per litre or 65%
2208.90.10	Distilled spirits (e.g. Konyagi, Uganda Waragi).	Shs.280 per litre or 65%
2208.90.90	Other spirits and other spiritous beverages.	Shs.280 per litre or 65%

1A. Delete the following tariff numbers, descriptions and corresponding rates of excise duty -

Tariff No.	Goods Description	Rate of Excise Duty
3923.21.00	Sacks and bags (including cones) of polymers of ethylene.	120%
3923.29.00	Sacks and bags of other plastics.	120%

2. In paragraph (2), delete Part II and insert the following new part II -

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

PART II

Category	Description	Rate of duty
A	Plain cigarettes or plain cigarettes with RSP of up to Shs.2,500 per mille.	Shs. 700 per mille
B	Soft cap cigarettes of 72mm or less, or soft cap cigarettes of 72mm or less with RSP of 2,501 to Shs.3,500 per mille.	Shs.1,000 per mille

C	Soft cap cigarettes of more than 72mm or soft cap cigarettes of more than 72mm with RSP of 3,501 to shs.4,500 per mille.	Shs.1,500 per mille
D	Hinge lid cigarettes or hinge lid cigarettes with RSP of more than shs.4,500 per mille. (RSP means Retail Selling Price)	Shs.2,500 per mille.

3. Delete the existing PART III and insert the following new PART III

PART III

1. Excise duty on beer shall be charged as follows -

(a)	Beer made from malt	shs.54 per litre
(b)	Beer not made from malt	shs.45 per litre
(c)	Stout and porter	shs.54 per litre
(d)	Other fermented beverages, mixture of fermented beverages and non-alcoholic beverages not elsewhere specified or included	shs.54 per litre
(e)	Opaque beer (e.g Chibuku)	shs.54 per litre
(f)	Cider	shs.54 per litre

2. Excise duty on wines shall be Kshs.7 per 1% of alcohol content in a litre.

3. Excise duty on compounded spirits shall be Kshs.7 per 1% of alcohol content in a litre.

4. Excise duty on undenatured ethyl alcoholic strength by volume of 80% or higher shall be Shs.200 or 65% per litre.

5. Mobile cellular phone services shall be charged excise duty at the rate of 10% of their excisable value.
 6. Other Wireless telephone services shall be charged excise duty at the rate of 10% of their excisable value.
 7. All imported used computers of more than three years from the date of manufacture shall attract excise duty at the rate of 25%.
4. Insert the following new paragraph immediately after paragraph 7-
- (8) Plastic shopping bags shall be charged excise duty at the rate of 50% of their excisable value.

SECOND SCHEDULE

(S.19)

2008

(Amendment of the Second Schedule to the Value Added Tax Act, Cap. 476.)

SECOND SCHEDULE

EXEMPT GOODS

PART I

Delete the following tariff numbers and the descriptions thereof -

<i>Tariff No.</i>	<i>Tariff Description.</i>
1006.10.00	Rice in the husk (paddy or rough).
1006.20.00	Husked (brown) rice.
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed.
1006.40.00	Broken rice.

Finance

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PART II

Delete paragraph (v).

No. 8

THIRD SCHEDULE

(Amendment of the Fifth Schedule to the Value Added Tax Act, Cap. 476.)

FIFTH SCHEDULE

PART A

Insert the following new paragraph immediately after paragraph 17-

18. Transportation of passengers by air carriers on international voyage or flight

PART B

Insert in their numerical order the following tariff numbers and the descriptions thereof-

Tariff No.

Tariff Description

1006.10.00

Rice in the husk (paddy or rough)

1006.20.00

Husked (brown) rice

1006.30.00

Semi milled or wholly milled rice, whether or not polished or glazed

1006.40.00

Broken rice

8443.31.00

Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or a network.

8443.32.00

Other printers capable of connecting to an automatic data processing machine or to a network.

<i>Tariff No.</i>	<i>Tariff Description</i>
8504.40.00	Static converters.
8523.21.10	Unrecorded Magnetic media cards incorporating a magnetic stripe
8542.31.00	Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits or other circuits
8711.10.00	Motor cycles with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50cc
8711.20.00	Motor cycles with reciprocating internal combustion piston engine of a cylinder capacity exceeding 50cc but not exceeding 250cc

PART C

Insert the following new paragraph immediately after paragraph 24-

25. Ordinary bread, gluten bread and unleavened bread