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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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REPORT ON THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILLS NO. 49 OF 2024)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 DEC 2024	DAY: MON.
TABLED BY:	Hon. (CPA) Kuria Kimani (Chairperson, Finance and National Planning)
CLERK-AT THE-TABLE:	MERCI CHUMO

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

ADR	-	Alternative Dispute Resolution
B2B	-	Business to Business
B2C	-	Business to Customer
CBK	-	Central Bank of Kenya
CS	-	Cabinet Secretary
DST	-	Digital Service Tax
EAC	-	East African Community
FDI	-	Foreign Direct Investment
KRA	-	Kenya Revenue Authority
MFIs	-	Microfinance Institutions
NDT	-	Non-Deposit-Taking
NSE	-	Nairobi Securities Exchange
OECD	-	Organization for Economic Co-operation and Development
TOGC	-	Transfer of Business as an Going Concern

LIST OF ANNEXURES

- Annexure 1: Adoption Schedule
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- Annexure 3: The Business Laws (Amendment) Bill, 2024 (National Assembly Bills No. 49 of 2024)
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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the review and consideration of the Business Laws (Amendment) Bill, 2024 (National Assembly Bills No. 49 of 2024), published on 31st October 2024. The Bill underwent its First Reading on 13th November 2024. It was subsequently referred to the Departmental Committee on Finance and National Planning for consideration and reporting to the House, pursuant to Standing Order 127.

The Bill comprises nineteen (19) clauses and seeks to make various amendments to various statutes as summarized below—

(a) THE BANKING ACT, CAP. 488

The Bill proposes amendments to strengthen regulatory oversight and enhance financial stability. It introduces stiffer penalties for banks and credit reference bureaus that fail to comply with prudential guidelines issued by the Central Bank of Kenya (CBK). Additionally, the Bill seeks to amend the Second Schedule of the Banking Act to progressively increase the minimum core capital requirements for banks and mortgage institutions. The proposed schedule includes a phased compliance plan, starting with a minimum core capital of Ksh.1 billion by December 31, 2024, and culminating at Ksh.10 billion by December 31, 2027.

(b) THE CENTRAL BANK ACT, CAP. 491

The Bill expands the regulatory mandate of the Central Bank of Kenya (CBK) to cover all non-depositing credit providers, including digital lenders, peer-to-peer lenders, and credit guarantee businesses. The proposal aims to bring the previously unregulated entities under CBK's oversight to ensure fair and transparent practices.

The Bill also introduces requirements for licensing, approval of credit channels, and establishment of credit parameters. Additionally, it mandates credit information sharing to promote responsible lending and enhance consumer protection. This regulatory framework seeks to ensure that non-deposit-taking credit providers operate in a manner that upholds financial stability and consumer trust.

(c) THE MICROFINANCE ACT, CAP.493C.

The Bill transfers the regulation of non-deposit-taking microfinance businesses from the Microfinance Act to the Central Bank of Kenya (CBK) Act, placing them under CBK's direct oversight. This aims to ensure consistency and strengthen consumer protection within the financial sector. The Bill sets out clear requirements for these institutions, including the mandatory disclosure of all credit costs and providing borrowers with detailed information about their rights and obligations. To facilitate a smooth transition, the Bill grants a six-month compliance period for these businesses to align with the new regulatory framework, ensuring better consumer safeguards and accountability.

In compliance with Article 118(b) of the Constitution of Kenya, 2010 and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media

on 14th November 2024, inviting the public and stakeholders to submit their memoranda, through both written and oral submissions on the Bill from 15th to 27th November 2024.

In accordance with the requirements of Article 118 (1) (b) of the Constitution, the Committee invited stakeholders to a public participation forum via letters REF: NA/DDC/F&NP/2024/(126) and REF: NA/DDC/F&NP/2024/(127) dated 18th November 2024 and 19th November 2024 respectively. The stakeholders' engagement meeting was held at the Mini Chamber, Main Parliament Buildings on 22nd November 2024 and at the Kenyatta International Convention Centre from the 25th to 28th of November 2024. During the engagement, stakeholders made oral and written submissions before the Committee. Additionally, the Committee conducted Public Hearings in 6 counties from 18th November 2024 to 20th November 2024, allowing members of the public to present their oral submissions.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honor to present to this House the Report of the Committee on its consideration of the Business Laws (Amendment) Bill, 2024 (National Assembly Bills No. 49 of 2024). The Committee extends its gratitude to the Offices of the Speaker and Clerk of the National Assembly for the invaluable logistical and technical support throughout the consideration of the Bill. The Committee acknowledges and appreciates the dedicated participation and submissions from all stakeholders and members of the public whose contributions have been instrumental in the thorough review of the bill.

Finally, I would like to express my sincere appreciation to the Honourable Members of the Committee and the Committee Secretariat for their invaluable contributions to preparing and producing this report. Their dedication and hard work have tremendously contributed to completing this task.

I am pleased to report that the Committee on Finance and National Planning has considered the Business Laws (Amendment) Bill, 2024 (National Assembly Bills No. 49 of 2024) and wishes to report to this August House with the recommendation that the House approves the Bill.

HON. CPA KURIA KIMANI, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

CHAPTER ONE

1.0. PREFACE

1.1. ESTABLISHMENT OF THE COMMITTEE

I. The Departmental Committee on Finance and National Planning is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate under **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. *To study and review all the legislation referred to it;*
- iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

1.2. MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. The National Treasury.
 - ii. Commission on Revenue Allocation
 - iii. Office of the Controller of Budget
 - iv. State Department for Economic Planning

1.3. COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency
UDA Party

Vice-Chairperson

Hon. Amb. Benjamin Langat, CBS, MP
Ainamoi Constituency
UDA Party

Hon. Dr. Adan Keynan, CBS, MP
Eldas Constituency
Jubilee Party

Hon. David Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Joseph Kipkoros Makilap, MP
Baringo North Constituency
UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency
ODM Party

Hon. George Sunkuya, MP
Kajiado West Constituency
UDA Party

Hon Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDM Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency
Jubilee Party

Hon. Joseph Munyoro, MP
Kigumo Constituency
UDA Party

Hon. Soud Machele, MP
Mvita Constituency
ODM Party

1.4. COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff—

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director, Legal Service

Mr. Salem Lorot
Legal Counsel I

Mr. James M. Macharia
Media Relations Officer I

Ms. Peninnah Simiren
Legal Counsel II

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. Benson Kamande
Clerk Assistant III

Ms. Nelly W.N Ondieki
Research Officer III

Mr. Benson Muthuri
Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Officer III

6. Further, the Committee Secretariat was supported by the following technical officers—

- | | | |
|------|------------------------------|---|
| I. | Dr. Martin M. Masinde | - Director, Parliamentary Budget Office |
| II. | Dr. Robert Nyaga | - Deputy Director, Parliamentary Budget Office |
| III. | Mr. Isaac Nabiswa | - Legal Counsel II |
| IV. | Ms. Gladwel Amimo | - Research Officer III |
| V. | Mr. Onyango Adera | - Fiscal Analyst III |
| VI. | Ms. Joy Kyalo | - Fiscal Analyst III |
| VII. | Mr. Allan Ngugi | - Intern |

CHAPTER TWO

2.0. OVERVIEW OF BUSINESS LAWS (AMENDMENT) BILL, 2024

2.1. BACKGROUND

7. The Business Laws (Amendment) Bill, 2024 (National Assembly Bills No.49 of 2024), is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, EGH. The Bill was published on 31st October, 2024. It was read for the First Time on 13th November, 2024 and thereafter referred to the Committee for consideration and tabling of a report to the House pursuant to standing order 127.

2.2. SUMMARY OF THE BILL

8. **Clause 2** of the Bill seeks to amend section 55 of the Banking Act by introducing specific penalty amounts for non-compliance. The amendment provides for penalties for non-compliance of up to Ksh.20 million in Institutions and Credit Reference Bureaus that fail to comply with any provisions of the Act, Prudential Guidelines, or Central Bank directives. Natural persons /individuals will be subjected to penalties of up to one million shillings for non-compliance. The proposal also introduces daily penalties on ongoing violations of up to one hundred thousand per day for each day or part of a day that the non-compliance continues.
9. Based on financial impact, the bill proposes penalties on institutions and Credit Reference Bureau of up to three times the gross monetary gain made or loss avoided due to non-compliance, whichever is higher. Corporate entities and natural persons or individuals are to suffer penalties of up to three million shillings and one million shillings, respectively.
10. **Clause 3** of the Bill seeks to amend the Second Schedule of the Banking Act to provide for progressive increase of the minimum core capital requirements for banks and mortgage institutions to enhance banking sector stability to attract global players. The amendment provides a transition period to help institutions comply with the new core capital requirement gradually. The Compliance provides as follows—
 - ✓ By December 31, 2024: Minimum core capital of Kshs. 1 billion.
 - ✓ By December 31, 2025: Minimum core capital of Kshs. 3 billion.
 - ✓ By December 31, 2026: Minimum core capital of Kshs. 6 billion.
 - ✓ By December 31, 2027: Full compliance with Kshs. 10 billion
11. **Clause 4** of the Bill proposes an amendment to broaden the Scope of Non-Deposit-Taking Credit Providers under the Central Bank of Kenya Act. The bill proposes to change Section 2 of the Central Bank of Kenya Act by removing the current definitions of digital credit business and replacing them with broader ones. These new

definitions will cover all types of non-deposit-taking credit providers, not just those offering digital credit. This will fix the previous gaps in the law, which only focused on digital credit and left out other types of credit providers.

12. The updated definitions also make it clear that services like buy now pay later, peer-to-peer lending, and asset financing are now included under the law. This change helps remove any confusion about whether these businesses were regulated, ensuring they are properly monitored by the Central Bank to protect consumers and strengthen the financial system.
13. **Clause 5** of the bill proposes to amend Section 4A of the Central Bank of Kenya Act to widen the scope of credit providers. This change will empower the Central Bank of Kenya (CBK) to license and supervise non-deposit-taking credit providers that are not regulated under any other written law. Currently, the CBK only regulates digital credit providers like mobile lenders, but the bill seeks to broaden this oversight to include other types of credit services like buy now pay later and asset financing. The Bill proposes also proposes that credit guarantee companies be brought under CBK supervision.
14. **Clause 6** of the bill recommends the Expansion of Regulatory Scope to Include Non-Deposit Taking Credit Providers Under the Central Bank Act. The Bill proposes to change the heading of Part VIC of the Central Bank of Kenya Act from "Regulation of Digital Lenders" to "Regulation of Non-Deposit Taking Credit Provider". The amendment tends to allow the Central Bank to regulate a wider range of credit providers who offer loans or credit services but do not take deposits, including those offering buy now pay later, peer-to-peer lending, and credit guarantees.
15. **Clause 7** proposes to amend Section 33R of the Central Bank of Kenya Act to expand the scope of regulation from solely digital lenders to a broader category of non-deposit-taking credit providers. This amendment empowers the Central Bank to oversee all providers offering credit services without taking deposits, such as buy now, pay later, asset financing, and credit guarantee companies. Additionally, the Bill seeks to grant the Central Bank of Kenya (CBK) the authority to issue an enforceable Code of Conduct for non-deposit-taking credit providers.
16. **Clause 8** of the bill proposes to amend Section 33S of the Central Bank Act, which mandates non-deposit-taking credit providers to obtain a license to operate. It also seeks to prohibit individuals from engaging in non-deposit-taking credit business without the proper authorization.
17. **Clause 9** proposes amendments on the Regulation and Licensing of Credit Guarantee Businesses under the Central Bank Act. The proposed amendment introduces a new section, 'PART VID —CREDIT GUARANTEE BUSINESS', to the Central Bank Act, focusing on credit guarantee businesses. It outlines the requirements for companies wishing to engage in this business, including the registration and licensing

process with the Central Bank, and penalties for non-compliance. Key provisions include:

- ✓ Registration and Licensing: Businesses must apply for registration and obtain a license to operate, with specific exemptions for certain foreign or international entities.
- ✓ Regulatory Oversight: The Central Bank will regulate credit guarantee companies, setting standards for capital adequacy, liquidity, and governance, while conducting supervision and enforcement.

18. The bill also introduces penalties on non-compliance for a person operating without registration or a license to be liable to a fine of up to KSh.1m, imprisonment for up to 3 years, or both, and a body corporate committing the same offense be liable to a fine of up to KSh.10m. Additionally, Providing false information to obtain a license carries a fine of up to KSh.1million or imprisonment for up to 3 years, or both for individuals; and up to KSh.10 million for body corporates
19. **Clause 10** of the Bill amends Section 43 of the Central Bank Act, changing the language in subsection (1) by replacing the term "digital" with "non-deposit-taking". This means that non-deposit-taking credit providers (instead of just "digital credit providers") are now included in the entities required to furnish information to the Central Bank. In other words, non-deposit-taking financial institutions, such as certain microfinance banks, mortgage refinance companies, and digital credit providers, will now all be subject to the requirement of submitting relevant information and data to the Central Bank as prescribed.
20. The proposal broadens the scope of the types of financial entities that must comply with the Bank's data and information reporting requirements. It also obligates non-deposit-taking credit providers to furnish the Central Bank of Kenya (CBK) with any information or data that the CBK may reasonably require to properly discharge its functions. This amendment broadens the reporting requirements to include all non-deposit-taking credit providers, ensuring greater oversight and enhancing the CBK's ability to monitor and regulate these institutions effectively
21. **Clause 12** of the bill introduces a Transition Period for Credit Guarantee Businesses to Comply with New Licensing and Regulatory Requirements under the Central Bank Act. It introduces a five-year transition period for businesses already engaged in credit guarantee services to comply with the new registration and licensing rules outlined in sections 33V, 33W, 33X, and 33Y. It also ensures that businesses must first meet the CBK's compliance standards before being granted a registration and license to operate.
22. **Clause 13 provides** clarification of the Non-Deposit-Taking Microfinance Business Definition. The Bill proposes to amend Section 2 of the Microfinance Act by updating the definition of "non-deposit-taking microfinance business" to specify that it refers to

a non-microfinance bank business that provides physical credit. This change aims to clarify the type of business by emphasizing that it involves offering credit secured by movable or immovable assets rather than relying on cash collateral.

23. **Clause 14** of the Bill proposes to amend Section 3 of the Microfinance Act to grant the Cabinet Secretary the authority to make regulations regarding the exemption of any non-deposit-taking microfinance business from the application of the Act. This amendment allows for the possibility of exempting certain businesses based on special circumstances, or nature of operations of the business.
24. However, the Bill further clarifies that such an exemption shall not be granted to any non-deposit-taking microfinance business whose annual revenue exceeds five hundred thousand shillings. This ensures that businesses generating significant revenue remain within the regulatory framework of the Act, ensuring accountability and oversight. Moreover, the Cabinet Secretary can outline specific criteria or conditions under which exemptions may apply, to balance regulatory compliance with the unique needs of smaller businesses in the sector.
25. **Clause 15** of the Bill proposes inserting a new provision, Section 4A, into the Microfinance Act, which sets out the qualifications for a non-deposit-taking microfinance business. This provision aims to fill a lacuna in the Act by clearly defining the conditions under which such businesses can operate. Specifically, the amendment requires that:

Qualifications for Operating Non-Deposit-Taking Microfinance Business:

- ✓ A person or entity wishing to carry out a non-deposit-taking microfinance business must be a company registered under the Companies Act, with the primary objective of engaging in a non-deposit-taking finance business.
- ✓ Additionally, the person or entity must be licensed under the Microfinance Act to carry out such business legally.

Penalty for Non-Compliance:

- ✓ Any individual or entity that carries out a non-deposit-taking microfinance business without fulfilling these registration and licensing requirements will be committing an offence.

Penalties for non-compliance include

- ✓ A fine of up to one hundred thousand shillings
- ✓ Or imprisonment for a term not exceeding three years.
- ✓ Or both a fine and imprisonment

26. **Clause 16** of the Bill proposes to amend Section 5 of the Microfinance Act to provide for the requirement that a non-deposit-taking microfinance business must apply for a license to carry out its business. Therefore, the requirement to apply for a license to

carry out a deposit-taking business will now also apply to those wishing to carry out a non-deposit-taking microfinance business.

27. **Clause 17** is on the Revocation of License for Non-Deposit-Taking Microfinance Businesses. The Bill proposes to amend Section 9 of the Microfinance Act to include provisions for the revocation of a license for a non-deposit-taking microfinance business if the licensee ceases to operate the business.

28. **Clause 18** of the Bill proposes to amend Section 16 of the Microfinance Act, allowing a person to apply for a loan or credit facility not only from a microfinance institution but also from a non-deposit-taking microfinance business. Currently, the Act only allows applications for loans or credit facilities from institutions, specifically microfinance banks that are licensed under the Act. The proposal broadens the scope by including non-deposit-taking microfinance businesses, which are entities offering microfinance services like loans and credit but do not accept deposits from the public.

29. **Clause 19** of the Bill proposes to insert new provisions into the Microfinance Act focused on consumer protection for borrowers engaging with non-deposit-taking microfinance businesses and outlines transitional mechanisms for businesses operating before the Act's commencement. They include—

a) **Consumer Protection Measures:**

- ✓ Non-deposit-taking microfinance businesses will be required to provide borrowers with clear and accurate information about the procedures and conditions for acquiring a micro-loan.
- ✓ Before a borrower acquires a micro-loan, the business must inform them of all financial costs associated with obtaining and servicing the loan, including interest rates, fees, and any other charges to be borne by the borrower.
- ✓ The amendment mandates that non-deposit-taking microfinance businesses maintain the confidentiality of borrowers' personal and financial information.
- ✓ Borrowers will be informed of their rights and duties related to the acquisition of micro-loans. This is crucial in ensuring that borrowers understand both their entitlements and obligations under the loan agreement, thereby reducing the risk of disputes and misunderstandings.

b) **Transitional Mechanisms for Non-Deposit-Taking Microfinance Businesses**

The Bill also introduces transitional mechanisms for non-deposit-taking microfinance businesses that were already operating before the enactment of the new provisions:

- ✓ **Licensing Requirements:** Within six months of the commencement of the Act, any person conducting a non-deposit-taking microfinance business must apply for a license under the new framework. This ensures that all such businesses are formally recognized and regulated.

- ✓ **Continued Operations Pending Licensing:** Businesses applying for a license can continue their operations while awaiting the determination of their application, but they must comply with the provisions of the new Act, any related regulations, and the conditions set by the Central Bank.
- ✓ **Grandfathering of Existing Licenses:** Any licenses issued before the commencement of the Act will remain valid until their expiration, allowing businesses time to align with the new regulatory framework.
- ✓ **Penalties for Non-Compliance:** A person who fails to comply with the licensing requirements or other provisions of the Act will be subject to severe penalties. They may face a fine of **Kenya Shillings Two million**, imprisonment for up to **five years**, or both, depending on the offense.

CHAPTER THREE

3.0. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1. LEGAL FRAMEWORK ON PUBLIC PARTICIPATION.

30. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

31. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall consider the views and recommendations of the public under paragraph (3) in its report to the House.

3.2. STAKEHOLDER AND PUBLIC ENGAGEMENTS

32. The Committee placed an advertisement in the print media on 14th November 2024, inviting the public to submit written memoranda on the Bill. The Committee received memoranda from stakeholders in various sectors of the economy and individuals from all walks of life, including members of the public. Further, the Committee conducted public participation for two weeks, during which stakeholders presented their views on the Bill to the Committee. The public participation included a town hall meeting at Min Chamber -Parliament.

33. The Committee received memoranda from the several stakeholders and members of the public.

34. The feedback from the interactions with stakeholders and various members of the public from Counties provided valuable input, highlighting specific concerns and suggestions for amendments. The following are the submissions on various clauses of the Bill:

3.2.1. KENYA BANKERS ASSOCIATION (KBA)

Clause 2

35. KBA proposed to delete the clause that prescribes penalties to be paid by stating that the proposed fines for non-compliance set for institutions and individuals may lead to higher costs of obtaining CRB reports and individuals are also at risk of being unwarranted. KBA proposed standardizing penalties for banks with those applied to other corporates to ensure fairness and equity in enforcing compliance measures and prevent any single sector from facing disproportionately severe penalties.

Committee Observation

The Committee noted the stakeholder's proposal; however, the proposed penalties seek to ensure compliance with the Prudential Guidelines, any provision of the Banking Act, or any directions issued by the CBK. This provision seeks to ensure stability within the banking sector. In addition, any institution that complies with this provision will not incur additional costs.

Clause 3

36. KBA was against the proposal by observing that the timeline for compliance with the core capital requirement was too short. They noted the fact that the policy aims to enhance stability. Still, they argued that the unintended short-term consequences and impacts on smaller banks, credit accessibility, operational priorities, and sector-wide adjustments may be disruptive.
37. Further, KBA Proposed a staggered increase of Kshs.1 billion every year over the next 8 years and not 3 years as proposed. The proposed gradual increase of the Core Capital within 3 years is too ambitious for smaller banks as they would need to inject more capital in the next 3 years.

Committee Observation

The Committee noted that the Kenyan banking sector has grown exponentially between 2012 and 2024 in terms of assets, loan portfolio, non-performing loans, deposits, number of deposit accounts, number of loan accounts, number of local bank branches and number of cross border subsidiaries and/or branches.

Despite the exponential growth in assets, liabilities, number of depositors and borrowers, the minimum core capital requirement for the banks has remained at Kshs.1.0 billion since 2012. The low capital base, which supports a significant asset base of the banking sector, makes it more susceptible to bank failure. The current minimum core capital can no longer support the sector's current and expected growth trajectory.

However, the Committee noted that three (3) years, as proposed in the Bill, is too short a time for the banks to restructure and ensure to achieve the Kshs 10 billion Core

capital. The Committee is proposing a phased-up approach of a maximum 8 years to achieve the set target of core capital

Clause 9.

38. Amend the proposed amendment that introduces regulations for credit guarantee companies to specify whether guarantees are excluded from the scope of the new credit guarantee business framework when offered as part of a bank's regular activities.
39. KBA proposed a further amendment on the proposed clause 9, to introduce a proviso after 33X(2) (c), to read as follows—
 - a) *Is a bank providing guarantees as part of its regular banking activities and already regulated under the Banking Act.*
40. The amendment will clarify whether licensed banks are exempt from the additional licensing and registration requirement.

Committee Observation

The Committee agreed with the proposal to introduce regulations for credit guarantee companies.

New Proposal on the Second Schedule of the Banking Act -KBA

41. KBA proposed introducing incentives, such as tax breaks for retained earnings or lower costs for issuing capital, to help banks meet the new core capital requirements without excessive financial strain.

Committee Observation

The Committee noted the stakeholder's proposal however, the new core capital requirement has been staggered over a period of 8years thus creating room for limited financial strain.

3.2.2. KERICHO COUNTY

Clause 3

42. The residents of Kericho County supported the amendment to the Banking Act, which seeks to increase core capital requirements for banks and mortgage institutions, for it will strengthen the financial sector and ensure its flexibility against global economic shifts. They noted that previously, the sector had faced challenges with some banks, such as Chase Bank, collapsing and people losing their savings. This requirement will ensure that such instances do not happen.

Clause 19

43. The residents supported the proposal and highlighted that the Microfinance Act amendments will streamline the licensing of non-deposit-taking microfinance institutions and introduce crucial consumer safeguards, helping protect borrowers from exploitative lending practices. They noted this amendment is timely, especially in the boda sector, where most residents have faced unfair practices. Additionally, they supported amendments to the Standards Act and the Scrap Metal Act, noting this will improve compliance with safety standards and enhance Kenya's manufacturing sector

3.2.3. SIAYA COUNTY

Clause 4

44. The residents supported the introduction and oversight of the buy-now-pay-later companies by the Central Bank of Kenya for it will regulate how rapidly growing business is done as some of the products offered are not licensed. They further outlined numerous cases of buy-now-pay-later firms about predatory lending.

3.2.4. ISIOLO COUNTY

Clause 5

45. Residents of Isiolo County expressed support for the amendments, stating that it would bring non-deposit-taking credit institutions under the control of the Central Bank of Kenya (CBK). They argued that this move would enhance the regulation and oversight of these institutions, ensuring greater financial stability and protecting consumers from potential risks. They also emphasized that by placing non-deposit-taking institutions under the CBK's supervision, there would be better monitoring of their operations, which could help prevent fraud, mismanagement, and other financial irregularities. Many also believed that the amendments would increase public confidence in these institutions, as they would be held to higher standards of accountability and transparency.

3.2.5. MOMBASA COUNTY

Clause 5

46. The residents supported the proposal to have non-deposit-taking credit institutions regulated by the Central Bank of Kenya but raised concerns about the criteria to be used in regulating the credit institutions. Additionally, the proposal will have credit institutions increase lending fees due to strict regulations, which will be expensive for the clients who are the end beneficiaries of the credit facilities.

New Proposed amendment on Section 55(2) of the Banking Act-

47. Some residents proposed an amendment for the non-deposit-taking institutions, where in the event that one pays a credit facility, he/she is automatically removed from CRB.

Committee Observation

The Committee noted that stakeholder's comments however, the Committee noted that the matter is adequately provided in the current legislation.

3.2.6. TAITA TAVETA COUNTY

Clause 5

48. The proposal to have non-deposit-taking institutions regulated by CBK was strongly supported with further amendments. They proposed to have the Central Bank of Kenya regulate the interest rates charged on loans by credit institutions. This will protect Kenyans from financial exploitation by these institutions and ensure standardization of credit facilities.

Committee Observation

The Committee noted that Clause 7 of the Bill gives power to the CBK to regulate credit institutions, including setting parameters for credit pricing. Therefore, the stakeholders' concerns have been taken care of in the Bill.

3.2.7. HON. LEWIS NGUYAI

Clause 19

49. Amend the proposed new section 53(1) (a) by inserting the words "and recovery" immediately after the words 'for lending.' The amendment will ensure a non-deposit-taking microfinance business exhibits transparency in dealing with the public and shall furnish borrowers with accurate information on the procedure and conditions for lending and recovering loans they issue.

Committee Observation

The Committee agreed with the stakeholders, noting that the proposal safeguards the borrower's interests.

50. Hon. Nguyai also proposed introducing a new paragraph immediately after the new section 53(1)(a) that requires every non-deposit-taking business to disclose all the charges and terms relating to a loan before granting it to a borrower. This would obligate lenders to give full and material disclosure of the charges and terms relating to the loans to protect consumers of these loans.

Committee Observation

The Committee noted the concerns have been provided for in the provisions of new section 53 (1)(b) in Clause 19 of the Bill.

51. Hon. Nguyai proposed the insertion of new subsections immediately after the proposed subsection 2 in Section 53 of the Microfinance Act as follows:

(2A) A non-deposit-taking microfinance business shall comply with the requirements of Article 31 of the Constitution and the Data Protection Act in lending loans and recovery of debts.

(2B) A non-deposit-taking microfinance business shall issue adequate notice to a borrower of its intention to recover a debt.

(2C) A non-deposit-taking microfinance business shall recover from a debtor with respect to a non-performing loan the maximum amount prescribed under subsection (2D).

(2D) The maximum amount referred to in subsection (2C) is the sum of the following –

- a) the principal owing when the loan becomes non-performing;
- b) interest, in accordance with the contract between the debtor and the non-deposit-taking microfinance business, not exceeding the principal owing when the loan becomes non-performing; and
- c) expenses incurred in the recovery of any amounts owed by the debtor.

(2E) This Section shall apply with respect to loans made before this Section comes into operation, including loans that have become non-performing before this Section comes into operation:

Provided that where loans become non-performing before this Section comes into operation, the maximum amount referred to in subsection (2C) shall be the following –

- (a) the principal and interest owing on the day this section comes into operation;
- (b) interest, in accordance with the contract between the debtor and the non-deposit-taking microfinance business accruing after the day this Section comes into operation, not exceeding the principal and interest owing on the day this Section comes into operation and
- (c) expenses incurred in the recovery of any amounts owed by the debtor.

(2F) If a loan becomes non-performing and then the debtor resumes payments on the loan and the loan becomes non-performing again, the limitation under paragraphs (a) and (b) of subsection (2D) shall be determined with respect to the time the loan last became non-performing.

(2G) Subsection (2D), shall not apply to limit any interest under a court order accruing after the order is made.

(2H) A person who fails to comply with the provisions of this Section commits an offense and shall be liable upon conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or both.

(2I) The Central Bank may suspend or revoke a license of a non-deposit-taking microfinance business by written notice to the holder of the license if the non-deposit-taking microfinance business fails to comply with the provisions of this Act.

52. Amend the new proposed section 53 subsection (3) by inserting the following proviso-

Provided that the interest on a loan shall be charged annually.

53. Hon. Lewis Ngunyai stated that the above-proposed amendments protect consumers who use loans from non-deposit-taking microfinance businesses while setting out precise requirements to be met by these microfinance businesses. Additionally, the proposals seeks to govern the interest charged by these non-deposit-taking microfinance businesses.

Committee Observation

The Committee agreed with the proposed amendment 2A. Regarding the other proposals, the Committee noted that they are provided for in the regulations related to the Central Bank under section 57 of the Central Bank of Kenya Act.

3.2.8. ONGOZA KENYA

Clause 5

54. The stakeholders supported the proposal to regulate non-deposit-taking credit providers, which include digital lenders. They noted the need to protect amounts paid on credit advancement from exploitation by non-deposit-taking credit providers. They also proposed including a provision that protects clients of non-deposit-taking credit institutions from harsh penalties on delayed repayment of loans under exceptional and unavoidable circumstances such as illnesses.

55. They also stated that non-deposit-taking credit institutions need a governing Act that guides and regulates the institutions in the industry and not the CBK Act.

3.2.9. ANJARWALLA & KHANA LLP

Clause 2(b)

56. ALN proposed an amendment to clause 2 (b) on the proposal to increase penalties on institutions, credit finance bureaus, and natural persons that fail to comply with the provisions of the Banking Act, Prudential Guidelines, or any other direction of CBK

57. ALN proposed new penalties be as follows:

a) *Not more than Kshs.20,000,000 for an institution or credit finance bureau or three times the gross amount of monetary gain made or loss avoided by the failure or refusal to comply, whichever is higher,*

b) *Kshs.3,000,000 for a corporate entity.*

c) *Kshs.1,000,000 for a natural person.*

d) CBK may make regulations prescribing additional penalties not exceeding Kshs 100,000 for each day of such failure.

58. Since the present applicable regulations for penalties is the Banking Penalties Regulations, 1999, the penalties proposed in the Bill should be revised to align with the same. It is the view of ALN that high penalties could pose financial risks to small institutions.

Committee Observation

The Committee noted the stakeholder's proposal; however, the proposed penalties seek to ensure compliance with the Prudential Guidelines, any provision of the Banking Act or any directions issued by the CBK. This provision seeks to ensure stability within the banking sector. In addition, any institution that complies with this provision will not incur any additional costs.

Clause 3.

59. ALN proposed that the core capital requirement of Kshs.10 billion to be met in three years be amended to either extend the compliance time or reduce the core capital requirement. This proposal would attract international investors, strengthen the banking sector, and improve the resilience of banks, but it would pose a challenge for 14 out of the 39 licensed lenders in Kenya.

Committee Observation

The Committee noted that the Kenyan banking sector has grown exponentially between 2012 and 2024 in terms of assets, loan portfolio, non-performing loans, deposits, number of deposit accounts, number of loan accounts, number of local bank branches and number of cross border subsidiaries and/or branches.

Despite the exponential growth in assets, liabilities, number of depositors and borrowers, the minimum core capital requirement for the banks has remained at Kshs.1.0 billion since 2012. The low capital base, which supports a significant asset base of the banking sector, makes it more susceptible to bank failure. The current minimum core capital can no longer support the sector's current and expected growth trajectory.

However, the Committee noted that three (3) years, as proposed in the Bill, is too short a time for the banks to restructure and ensure to achieve the Kshs 10 billion Core

capital. The Committee is proposing a phased-up approach of a maximum 8 years to achieve the set target of core capital

Clause 19

60. The stakeholder was against the proposal, with the view that if the proposal were implemented, non-deposit-taking microfinance businesses would be governed by the Central Bank Act and the Microfinance Act. This could create double licensing, compliance requirements, and double financial liability.

Committee Observations

The Committee is of the different view that there is no potential clash on the regulatory framework.

3.2.10. KENYA DEVELOPMENT CORPORATION LIMITED (KDC)

Clause 4

61. Amend Clause 4(f) that defines a 'non-deposit-taking credit provider' to include "or an entity that is wholly or majorly owned by the national government or county government" immediately after 'or county government's proposal aims to exclude commercial public sector entities that are wholly or majorly owned by national or county governments from the institutions to be governed by the Act. Such entities typically have a development-oriented mandate, are government-backed, and operate under the oversight of other government ministries.

Committee Observation

The Committee disagreed with the stakeholder since these institutions can be efficiently operated by private entities as opposed to government agencies.

3.2.11. M-KOPA KENYA LIMITED, M-KOPA LOANS LIMITED AND M-KOPA MOBILITY KENYA LIMITED.

Clause 4 b

62. The stakeholder proposed deleting the proposal and amending the definition of "non-deposit-taking credit business" to specify the means of granting credit. The proposed clause in the Bill will fail to account for the unique aspects and business models employed by digital credit providers, including operational complexities and costs of their online platforms, investments in technology and the data-driven models to support their operations. They proposed to amend clause 4 (b) (a) to read as follows—

Granting of loans or credit facilities, whether or not digitally to members of the public or a Section of it, with or without interest and either secured or unsecured on the goods or assets purchased;

Committee Observation

The Committee agreed with the stakeholder proposal which will cater of all models of granting credit facilities.

63. Further, they proposed the inclusion of the definition “pay as you go” such that entities can leverage their unique characteristics and, the Bank can, in recognition of these unique characteristics, determine an appropriate pricing framework and other supervisory rules for each. They proposed the inclusion of the pay-as-you-go immediately after Clause 4 (b) (c), which reads as follows—

d. Pay-as-you-go arrangements as determined by the bank

Committee Observation

The Committee agreed with the stakeholder’s proposal.

Clause 7

64. The stakeholder supported the proposal and proposed an amendment to section 33R(c) as follows—

(d) determine a framework for pricing of credit;

Committee Observation

The Committee was of a different view that, as currently drafted, the provision is sufficient.

65. The stakeholder also proposed further revision of the proposed clause (7) (33R) (e) to read as follows:

(e) provide A minimum mandatory standard of conduct is required from all non-deposit-taking credit providers to comply with in their business conduct.

Committee Observation

The Committee was of a different view that, as currently drafted, the provision is sufficient.

Clause 8

66. The stakeholder proposed an amendment on the proposed new clause to ensure fairness in pricing models, where the unique costing models of each business are considered. Amend the clause to read as follows—

(f) the licensee fails, without reasonable justification, to follow the Bank’s guidelines (under this Act or as the Bank may direct), to address a customer’s complaint;

(g) the licensee imposes unreasonable or unjustifiable charges on loans, deviating from the pricing framework provided by the Bank and/or pricing parameters approved by the Bank (where applicable).

Committee Observation

The Committee was of a different view that, as currently drafted in (h), the provision is sufficient.

Clause 11 (j)

67. Amend the proposal because no consideration appears to have been made to the gravity of an offense. To avoid inconsistent application of penalties and ensure fairness, introducing a tiered system considering the impact on a customer's financial liberties and the frequency of said impact as one of the gravest of violations is recommended. The amendment to read as follows—

(4) Without prejudice to the generality of subsection (3) (h), the Bank shall, in regulations, prescribe a tiered system of penalties to be paid by non-deposit-taking credit providers who fail or refuse to comply with the provisions of this Act, the regulations made thereunder, guidelines, Code of Conduct and directives issued by the Bank. The penalty tiers shall be based on the severity and frequency of violations. The criteria for determining the appropriate penalty tier shall be clearly defined. The limit for the penalties shall not exceed one million shillings or one time the gross amount of the monetary gain made or loss avoided by the failure or refusal to comply, whichever is higher, 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:

Provided that the Bank shall, on a case-by-case basis, assess the facts of each case and determine the reasonable penalty to impose in accordance with, taking into account such factors as may be prescribed or as the Bank may consider necessary. The Bank shall allow a reasonable grace period of not less than one year for licensees to adjust to the new penalty regime and prioritize remediation and corrective action over punitive measures for first-time or minor violations.

Committee Observation

The Committee, while considering the stakeholder views, was of a different view that, as currently provided, the clause provides for a fair and predictable penalty regulatory framework.

3.2.12. AMERICAN CHAMBER OF COMMERCE (AMCHAM)

Clause 4 (b) (a)

68. AMCHAM proposed an amendment on the proposed definition of "non-deposit-taking credit business" to read as follows:

"non-deposit taking credit business" means the granting of loans or credit facilities, whether digitally or not, to members of the public or a section of it, with or without interest, and either secured or unsecured on the goods or assets purchased;

69. It is the view of AMCHAM that this amendment will reduce ambiguity and uncertainty introduced by the deletion of the definition as proposed in Clause 4 (a).

Committee Observation

The Committee agreed with stakeholder on the need to define "non-deposit taking credit business" to include the words "digitally or not"

Clause 7

70. AMCHAM proposed an amendment on 33R (e) to read as follows—

(e) develop and implement an enforceable Code of Conduct binding all non-deposit-taking credit providers in their conduct of business upon:

- I. Active engagement with the non-deposit-taking credit providers before implementation of the Code of Conduct;*
- II. Ensuring the Code of Conduct allows for flexibility and innovation, enabling adaptation to changing market conditions and customer needs;*
- III. Ensuring regular review of the Code of Conduct for relevance and effectiveness in the evolving credit landscape.*

71. Further, AMCHAM proposed a new insertion immediately after 33R (e) that reads as follows—

(f) Assign non-deposit-taking credit providers to dedicated relationship managers to facilitate effective communication and support.

Committee Observation

The Committee noted the stakeholder's proposals; however this is already provided for in the current legislation.

Clause 8

72. AMCHAM proposed a new amendment after paragraph (f) to ensure fairness and transparency by noting that it is essential to provide clear guidance on what constitutes a "conclusive address of a customer's complaint" and establish objective

criteria for determining "unreasonable or unjustifiable charges. The proposal to read as follows—

(g) the licensee fails to conclusively address a customer's complaint, following the Bank's guidelines on customer complaints redress within the time and manner prescribed by the Bank under this Act or as the Bank may direct.

(i) The licensee imposes unreasonable or unjustifiable charges on loans, deviating from the Bank's approved pricing parameters.

Committee Observation

The Committee, while considering the stakeholder views, was of a different view that, as currently provided, the clause provides for a fair and predictable penalty regulatory framework.

Clause 11 (j)

73. AMCHAM noted that lack of clarity on the penalty regime may lead to inconsistencies and disproportionate penalties, creating uncertainty for businesses. A clear and tiered penalty system is essential to ensure fairness and encourage compliance based on the severity and frequency of violations. AMCHAM proposed a new amendment to read as follows—

"(4) Without prejudice to the generality of subsection (3) (h), the Bank shall, in regulations, prescribe a tiered system of penalties to be paid by non - deposit taking credit providers who fail or refuse to comply with the provisions of this Act, the regulations made thereunder, guidelines, Code of Conduct and directives issued by the Bank."

The penalty tiers shall be based on the severity and frequency of violations. The criteria for determining the appropriate penalty tier shall be clearly defined. The limit for the penalties shall not exceed one million shillings or one time the gross amount of the monetary gain made or loss avoided by the failure or refusal to comply, whichever is higher; 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:

Provided that the Bank shall, on a case-by-case basis, assess the facts of each case and determine the reasonable penalty to impose in accordance with, taking into account such factors as may be prescribed or as the Bank may consider necessary.

The Bank shall allow a reasonable grace period of not less than one year for licensees to adjust to the new penalty regime and prioritize remediation and corrective action over punitive measures for first-time or minor violations.

Committee Observation

The Committee, while considering the stakeholder views, was of a different view that, as currently provided, the clause provides for a fair and predictable penalty regulatory framework.

3.2.13. SAFARICOM PLC

Clause 4 (b)

74. Amend the proposed new definition of 'buy now pay later' to read as follows—

buy-now-pay-later' means an arrangement whereby the consumer purchases corporeal movable goods or assets, secured or unsecured on the goods or assets, and pay later in installments with or without interest.

75. This provides clarity in so far as the goods and assets as assets may be interpreted to include services, whereas the proposal covers moveable physical assets.

Committee Observation

The Committee, while considering the stakeholder views, was of a different view that assets cannot be in the form of services, and therefore, as currently provided, the provision is explicit.

76. Safaricom proposed to introduce a new section 4 (b) (g) that reads as follows—

(g)This act will not apply to any credit arrangements involving the provision of credit by a person that is merely incidental to the sale of goods or provision of services by the person;

77. This proposal will ensure that where a business is providing credit for the support of its core business, it will not be required to be licensed as a credit provider. For example, a manufacturer may extend credit terms to its distributor, or a business may extend credit services to its customers when accessing the services or goods it sells.

Committee Observation

The Committee agreed with the stakeholder proposal noting the need for clarity when a manufacturer/business extends credit services to a distributor/customer.

New proposals by Safaricom

78. Safaricom proposed a transitional period for licensing the 'Non-Deposit Taking Credit Taking' business to allow service providers and the Central Bank of Kenya ample time to apply and streamline the operational processes. We propose 12 months from the date the amendments are assented to by the President.

Committee Observation

The Committee agreed with the stakeholder's proposal to comply within a period of twelve (12) months.

79. Safaricom also proposed that the license period for the 'Non-Deposit Credit Taking' business license be longer than one year. We propose that the license to be issued should be for 5 years, with annual compliance reviews where necessary. This will ensure that investors have an adequate period to recoup their investment.

Committee Observation

The Committee, while considering the stakeholder views, was of a different view that the stakeholder is confusing the initial license and renewable licenses.

CHAPTER FOUR

4.0. COMMITTEE OBSERVATIONS

The Committee having reviewed the Business Laws (Amendment) Bill, 2024, (*National Assembly Bills No. 49 of 2024*) **observed THAT:**


1. The Minimum Core Capital has remained unchanged for the past 12 years, which requires the need for its review and subsequent increase. While it is evident that an upward adjustment is necessary to align with the current economic and financial environment, the proposed timeline of three years in the Bill for banks to meet the revised minimum core capital requirements is considered too short. Extending this compliance period to eight years would provide a more practical and manageable timeframe for banks to raise the required capital, allowing them to strategize and implement measures that ensure sustainable compliance without destabilizing their operations or the wider financial sector.
2. The Committee also emphasized the importance of the Central Bank of Kenya (CBK) playing a pivotal role in guiding the process. The CBK should offer clear guidelines and a structured roadmap on how institutions can progressively raise their capital within the stipulated period. This could include phased benchmarks, tailored support for smaller institutions, and mechanisms to monitor compliance while minimizing disruption to the banking sector and safeguarding financial stability. Such an approach would ensure that the increase in minimum core capital is achieved in a manner that strengthens the banking sector without imposing undue pressure on financial institutions.
3. The proposed penalties for non-compliance with the Prudential Guidelines, any provisions of the Banking Act, or any directives issued by the Central Bank of Kenya (CBK) are structured to promote adherence to regulatory standards and safeguard the stability of the banking sector.
4. The penalties for institutions or CRBs that fail or refuse to comply are capped at a maximum of KSh. 20 million. Alternatively, the penalty could amount to three times the gross monetary gain obtained, or the loss avoided as a result of the non-compliance, whichever is higher. This tiered approach ensures that penalties are commensurate with the financial impact of the violation, thereby discouraging willful breaches of the regulatory framework.
5. **Corporate Entities (Other than Institutions or CRBs):** For corporate entities, the penalty is set at a maximum of KSh. 3 million. This provision addresses violations committed by non-banking entities while ensuring that the penalties are substantial enough to act as a deterrent.

6. These regulatory measures are not intended to create undue financial burdens but to promote responsible and transparent operations within the sector. Ultimately, these provisions are geared toward fostering a stable, reliable, and resilient banking environment that protects depositors, promotes confidence in the financial system, and supports the broader economic stability of the country.
7. **The Committee further observed that the proposed regulatory framework would greatly benefit the common Mwananchi by establishing clear and transparent requirements for financial institutions.** Key among these requirements is the mandatory disclosure of all credit costs, ensuring borrowers are fully informed about the total expenses associated with their loans. Additionally, institutions will be required to provide borrowers with detailed information about their **rights and obligations**, empowering them to make more informed financial decisions and fostering greater accountability in the financial sector.
8. **To facilitate seamless implementation of these changes, the Committee noted that the six-month compliance period outlined in the Bill might be insufficient for affected businesses to fully align with the new regulatory framework.** Recognizing the potential challenges posed by this limited timeframe, the committee proposed extending the compliance period to **12 months**. This amendment is intended to provide businesses with adequate time to adapt their systems, processes, and operations to meet the new legal and regulatory requirements.
9. The proposed extension reflects the Committee's commitment to balancing the need for swift regulatory improvements with the practical realities of implementation. Allowing businesses sufficient time to comply, the amendment aims to ensure a smoother transition, minimizing disruptions while maintaining the overarching goal of safeguarding the interests of borrowers and promoting transparency and fairness within the financial sector. Ultimately, these measures seek to build a more inclusive, stable, and resilient financial ecosystem that works for all stakeholders, particularly the everyday citizen.


CHAPTER FIVE

5.0. COMMITTEE RECOMMENDATION

The Committee having reviewed the Business Laws (Amendment) Bill, 2024, (National Assembly Bills No. 49 of 2024) recommends that the House approves the Bill with amendments.

SIGNED.......... DATE.....*2nd Dec, 2024*.....

HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 DEC 2024	
DAY: Mon.	
TABLED BY:	Hon. (CPA) Kuria Kimani (Chairperson, Finance and National Planning)
CLERK AT THE TABLE:	Metsy Chumo



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO. 49 OF 2024).

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Monday, 2nd December 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

**MINUTES OF THE 102ND SITTING OF THE DEPARTMENTAL COMMITTEE
ON FINANCE AND NATIONAL PLANNING HELD ON MONDAY 2ND
DECEMBER, 2024 IN HILTON GARDEN HOTEL, MACHAKOS COUNTY AT
10:30 AM.**

PRESENT

1. Hon. CPA Kuria Kimani, MP - Chairperson
2. Hon. (Amb.) Benjamin Kipkirui Langat, MP - Vice- Chairperson
3. Hon. (Dr.) Adan Keynan Wehliye, MP
4. Hon. Joseph Makilap Kipkoros, MP
5. Hon. David Mwalika Mboni, MP
6. Hon. CPA. Joseph Maero Oyula, MP
7. Hon. Joseph Kamau Munyoro, MP
8. Hon. CPA Julius Kipletting Ruto, MP
9. Hon. George Sunkuiya Risa, MP
10. Hon. Dr. John Ariko Namoit, MP
11. Hon. Paul Kibichiy Biego, MP
12. Hon. Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Shadrack Mwiti Ithinji, MP
2. Hon. Andrew Adipo Okuome, MP
3. Hon. Mohamed Soud Machele, MP

SECRETARIAT

1. Ms. Jennifer Ndeto - Deputy Director, Legal Services
2. Dr. Martin Masinde - Director, Parliamentary Budget Office
3. Mr. Robert Nyagah - Deputy Director PBO
4. Mr. Benjamin Magut - Principal Clerk Assistant II
5. Ms. Brigitta Mati - Legal Counsel I
6. Mr. Salem Lorot - Legal Counsel I
7. Ms. Winfred Kambua - Clerk Assistant III
8. Mr. Benson Kamande - Clerk Assistant III
9. Mr. George Ndenjeshe - Fiscal Analyst III
10. Ms. Joy Kyalo - Fiscal Analyst III
11. Ms. Nelly Ondieki - Researcher Officer III
12. Ms. Gladwel Amimo - Fiscal Analyst III
13. Mr. Onyango Adera - Fiscal Analyst III
14. CPA Cyrille Mutali - Fiscal Analyst
15. Mr. Lenny Muchangi - Legal Counsel II
16. Ms. Joyce Wachera - Hansard Reporter II
17. Mr. Benson Muthuri - Serjeant At Arms
18. Mr. Allan Kimani - Intern

IN ATTENDANCE

AGENDA

Consideration and adoption of the following reports:

1. Report on The Tax procedures (Amendment)(No.2) Bill 2024 (National Assembly Bills No. 46)
2. Report on The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)

MIN No. NA/F & NP/2024/347: PRELIMINARIES

The meeting was called to order at 11.00 am followed by prayer by Hon. Dr. John Ariko Namoit, MP

MIN No. NA/F & NP/2024/348: CONFIRMATION OF PREVIOUS MINUTES

Confirmations of the minutes of the previous sittings was differed to the next sitting.

MIN No. NA/F & NP/2024/349: CONSIDERATION AND ADOPTION OF THE TAX PROCEDURES (AMENDMENT)(NO.2) BILL 2024 (NATIONAL ASSEMBLY BILLS NO. 46)

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter four and five of the Report. The Report was thereafter adopted with amendments having been proposed by Hon. Joseph Kamau Munyoro, MP and seconded by Hon. Joseph Makilap Kipkoros, MP.

(Comprehensive details of the proposed amendments are contained in Chapter Five of the Report on the Consideration of The Tax procedures (Amendment)(No.2) Bill 2024 (National Assembly Bills No. 46)

MIN No. NA/F & NP/2024/350: CONSIDERATION AND ADOPTION OF THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2024)

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter four and five of the Report. The Report was thereafter adopted with amendments having been proposed by Hon. (Dr.) Adan Keynan Wehliye, MP and seconded by Hon. CPA Julius Kipletting Ruto, MP.

(Comprehensive details of the proposed amendments are contained in Chapter Five of the Report on the Consideration of the Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)

MIN No. NA/F & NP/2024/351: ADJOURNMENT

There being no other business, the meeting was adjourned at 2:25 PM. The next meeting will be held on notice.

SIGNED: DATE: *2nd December, 2024*

**HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING.**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 49 OF 2024)

INVITATION TO SUBMIT MEMORANDA AND NOTIFICATION OF PUBLIC HEARINGS

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Business Laws (Amendment) Bill, 2024 (National Assembly Bill No. 49 of 2024) was Read a First Time on Wednesday, 13th November, 2024, and thereafter committed to the relevant Committees for consideration and reporting to the House;

IT IS NOTIFIED that the Business Laws (Amendment) Bill, 2024 (National Assembly Bill No. 49 of 2024) is sponsored by the Leader of the Majority Party and seeks to amend nine (9) Acts of Parliament as follows—

- (1) The Bill seeks to amend the **National Electronic Single Window System Act (Cap. 485D)** to empower the Cabinet Secretary to exempt certain category of users from the payment of fees prescribed under the Act;
- (2) The Bill seeks to amend the **Banking Act (Cap. 488)** to—
 - (a) provide for penalties against institutions, credit reference bureaus or any other person who fails or refuses to comply with any provision of the Act, the Prudential Guidelines and directions issued by the Central Bank; and
 - (b) provide for progressive increase of the minimum core capital requirements for banks and mortgage institutions to enhance banking sector stability to attract global players;
- (3) The Bill seeks to amend the **Central Bank of Kenya Act (Cap. 491)** to—
 - (a) revise definitions relating to digital credit business and clarify application of the law to credit businesses such as buy now pay later credit services, peer to peer lending and asset financing;
 - (b) empower the Central Bank to license and supervise non-deposit-taking credit providers not regulated under any written law;
 - (c) expand the scope of the Act to regulation of non-deposit-taking credit providers.
 - (d) insert a new Part VIID on regulation of credit guarantee companies; and
 - (e) provide a transitional period of five years for the commencement of the registration and licensing of credit guarantee companies;
- (4) The Bill seeks to amend the **Microfinance Act (Cap. 493C)** to—
 - (a) empower the Cabinet Secretary to make regulations on exemption of specified non-deposit-taking microfinance businesses from the application of the Act;
 - (b) provide for the qualifications for carrying out non-deposit-taking microfinance business;
 - (c) provide for licensing and revocation of licences of non-deposit-taking microfinance businesses; and
 - (d) provide consumer protections for borrowers from predatory lending, including conditions for micro-lending; financial costs associated with micro-loans and the rights and duties associated with micro-loans.
- (5) The Bill seeks to amend the **Standards Act (Cap. 496)** to—
 - (a) provide for the registration of manufacturers by the Kenya Bureau of Standards;
 - (b) provide for the payment and disbursement of the standard levy order from the Bureau account;
 - (c) provide for the Standards to be met by manufacturers;
 - (d) provide for compliance with sampling and information requirements by manufacturers, importers, stockers, distributors, sellers and exhibitors;
 - (e) provide for the establishment and designation of laboratories and establishment of calibration facilities by the Kenya Bureau of Standards; and
 - (f) provide for the appointment of inspection bodies in the country of origin of goods to undertake verification of conformity to Kenya Standards and to require the inspection bodies to have a tax presence in Kenya;
- (6) The Bill seeks to amend the **Kenya Accreditation Service Act (Cap. 496A)** to—
 - (a) provide for the Accreditation of foreign Conformity Assessment Bodies operating in Kenya; and
 - (b) provide for the imposition of an accreditation levy at the rate of three percent of the value of any accredited service offered to a third party by an accredited conformity assessment body;
- (7) The Bill seeks to amend the **Scrap Metal Act (Cap. 503)** to amend the composition of the Scrap Metal Council;

- (8) The Bill seeks to amend the **Kenya Industrial Research and Development Institute Act (Cap. 511)** provide for further functions of the Institute to include buying, selling or taking patent rights in inventions and undertaking marketing research, technological and innovative products; and
- (9) The Bill seeks to amend the **Special Economic Zones Act (Cap. 517A)** to—
 - (a) revise the definition of business process outsourcing;
 - (b) empower the Cabinet Secretary to set the minimum acreage of land to be considered for declaration as a Special Economic Zone;
 - (c) provide that sold goods that remain within a customs-controlled area of a special economic zone are not entitled to the benefits conferred under the Act;
 - (d) empower the Special Economic Zones to determine the minimum investment value and minimum land size;
 - (e) enable public entities to qualify as special economic zone developers and operators; provide for the issuance of Special Economic Zone Business Service Permit;
 - (f) provide for the lease, sub-lease or sale of land or buildings to special economic zone service permit holders; and
 - (g) outline incentives and tax benefits that will be granted to a special economic zone developer operator or enterprise.

The Bill has been committed to two Departmental Committees for consideration as set out in the schedule below—

S/No.	ACT PROPOSED TO BE AMENDED	COMMITTEE
1.	The Banking Act, Cap. 488	Finance and National Planning
2.	The Central Bank Act, Cap. 491	
3.	The Microfinance Act, Cap. 493C	
4.	The National Electronic Single Window System Act, Cap. 485D	Trade, Industry and Cooperatives
5.	The Standards Act, Cap. 496	
6.	The Kenya Accreditation Service Act, Cap. 496A	
7.	The Scrap Metal Act, Cap. 503	
8.	The Kenya Industrial Research and Development Institute Act, Cap. 511	
9.	The Special Economic Zones Act, Cap. 517A	

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the **Departmental Committee on Finance and National Planning** and the **Departmental Committee on Trade, Industry and Co-operatives**.

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to businesslaws@parliament.go.ke to be received **on or before Thursday, 28th November 2024 at 5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on <http://parliament.go.ke>.

IT IS FURTHER NOTIFIED that—

- (1) The Departmental Committee on Finance and National Planning shall hold Public Hearings on the Bill at the **Kenyatta International Convention Centre (KICC)** from **Monday 25th November, 2024 to Thursday 28th November, 2024**; from 10.00am to 5.00pm; and
- (2) The Departmental Committee on Trade, Industry and Co-operatives shall hold Public Hearings on the Bill at the **Mini Chamber, 1st Floor, County Hall, Parliament Buildings** from **Monday 25th November, 2024 to Wednesday 27th November, 2024**; from 10.00am to 5.00pm.

The Committees shall discuss the contents of the Bill and its implications during the hearings. Members of the public are invited to attend and share their views on the Bill during the sessions.

A copy of the Bill is available at the National Assembly Table Office or <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY

14th November 2024



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
NAIROBI, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/F&NP/2024/ (126)

18th November 2024

CPA Dr. Grace Kamau, Ph.D
Chief Executive Officer
Institute of Chartered Public Accountants of
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President, Law Society of Kenya
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Ms. Edna Gitachu
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PWC Tower, Waiyaki Way/Chiromo Road
Westlands
NAIROBI

Mr. Alex Mathini
Partner,
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5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chiromo Road,
NAIROBI

Mr. Daniel Ngumy
Partner
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NAIROBI

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
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Mr. Kwame Owino
Chief Executive Officer,
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Ag. Director General
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Managing Partner
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NAIROBI

Mr. Michael Mburugu

Regional Tax Partner
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Off Brookside Drive, Westlands
NAIROBI

Dr. Hosea Kili, OGW

President
Association of Pension Trustees and
Administrators of Kenya
12th Floor, Pension Towers, Loita Street
NAIROBI

Chief Executive Officer

Federation of Kenya Registered Electrical
Engineers
Thika Super Highway,
Waka Business Centre
NAIROBI

Hon. Sabulei Philemon Kiplangat

The Chairperson
County Assembly Forum
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NAIROBI

Mr. Ernest Muriu

Partner
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Grant Thornton
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Avocado Towers,
Muthithi Rd,
NAIROBI,

Ms. Diana Gichengo

Executive Director
The Institute for Social Accountability
Westlands Avenue, Wendy Court, Hse
no.10, David Osieli Rd, Westlands
NAIROBI

Mr. George Aluru

Chief Executive Officer
Farasi Digital Hailing Taxi
NAIROBI

Ms Carole Kariuki

Chief Executive Officer
Kenya Private Sector Association
7th Floor, South Tower, Two Rivers,
Limuru Rd,
NAIROBI

Mr. Raimond Molenje

Ag. Chief Executive Officer Kenya
Bankers Association
13th Floor, International House
NAIROBI

Mr. James Muraguri
Chief Executive Officer
Institute of Public Finance
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Chief Executive Officer
Bajeti Hub
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Ms. Agnes Mucuha
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County Manager East Africa
DDG-AME Regional Vice President Office
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Nicanor Sabula
Chief Executive Officer
Kenya Association of Travel Agents
Muthangari Drive, 10th Floor, The
address, Off Waiyaki Way, Westlands
Nairobi.

Mr. Laban Chege
Association of Gaming Operators of Kenya
View Park Towers Utalii House, Utalii
Nairobi

Dear *Sir / Madam*

RE: STAKEHOLDER ENGAGEMENT ON THE TAX PROCEDURES (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2024); THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024) AND THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2024) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to **study and review all the legislation referred to it.**

The Tax Procedures (Amendment) (No.2) Bill (National Assembly Bill No. 46 of 2024); The Tax Laws (Amendment) Bill (National Assembly Bill No. 47 of 2024) and The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024) underwent the First Reading pursuant to Standing Order 127(3) on **Wednesday, 13th November 2024** and were committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House. The principal object of the Bill (s) is as follows:

- 1. The Tax Procedures (Amendment) (No.2) Bill (National Assembly Bill No. 46 of 2024);**
The Principal Object of the Bill is to amend the Tax Procedures Act.
- 2. The Tax Laws (Amendment) Bill (National Assembly Bill No. 47 Of 2024)**
The Bill seeks to amend the Income Tax Act, Value Added Tax Act and the Excise Duty Act.
- 3. The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)**

The Bill seeks to amend the following three (3) Acts of Parliaments which were referred to the Departmental Committee on Finance and National Planning among six others which were referred to the Departmental Committee on Trade, Industry and Co-operatives; -

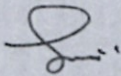
- i) Banking Act (Cap. 488)
- ii) Central Bank of Kenya Act (Cap. 491)
- iii) Microfinance Act (Cap. 493C)

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to receive your submission and comments on the said Bill(s). The meetings will be held From **Monday, 25th November 2024 to Thursday, 28th November 2024** from **8.30 a.m.** as per the attached schedule.

You are requested to prepare comprehensive submissions on **any representations you may have of the Bill (s)** and email a soft copy to cna@parliament.go.ke on or before the day of the meeting. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The Committee's Liaison Officers for the meeting are **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or **email address: benjamin.magut@parliament.go.ke**; **Mr. Benson Kamande** of telephone number **0789459387** or **email address: benson.kamande@parliament.go.ke** or **Ms. Winfred Kambua** on Tel. No **0720571777** or email address winfred.kilonzo@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to **H.E FCPA Ahmed Abdullahi, EGH**
Chairperson
Council of Governors
Delta House, Rhapta Road
NAIROBI



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/F&NP/2024/ (127)

19th November 2024

Ms. Miriam Karanja
Ag. Chief Executive Officer
Clean Cooking Association of Kenya
NAIROBI

Ms. Amina Ali Mohamed
Lead Consultant
Sanaabil Consulting Limited
NAIROBI

Captain Murithi Nyagah
General Secretary & CEO
Kenya Airline Pilots Association
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NAIROBI

Mr. Eric Githua
Chairperson
Alcohol Beverages Association of Kenya
NAIROBI

Ms. Phyllis Wakiaga
Kenya Association of Manufacturers
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NAIROBI

Mr. Peterson Mendenhall
Chief Operating Officer
Tatu City SEZ
NAIROBI

Mr. Bimal Kantaria
Director
Elgon Kenya Limited
East Gate Road, Off Mombasa Road
NAIROBI

Greg Murray
KOKO Networks
Rivaan Center, Muguga Green
NAIROBI

Ms. Susan Maingi
Association of Gaming Operators-Kenya
NAIROBI

Ms. Smita Sanghrjka
Partner & Country Lead
KPMG East Africa
ABC Towers, Waiyaki Way
NAIROBI

Mr. Geoffrey Odundo
Chief Executive Officer
Nairobi Securities Exchange
NAIROBI

Mr. Donald Wangunyu
Chairman, Kenya Association of
Stockbrokers and Investment Banks
NAIROBI

Mr. Maxwell Okello
Chief Executive Officer
American Chamber of Commerce, Kenya
NAIROBI

Mr. Mbuvi Ngunze
Chief Executive Officer
Kenya Association of Air Operators
NAIROBI

Mr. Francis Atwoli (NOM), CBS, EBS, MBS
Secretary General and Head
Central Organisation for Trade Unions (Kenya)
Solidarity Building, Digo Road, Gikomba
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Mr. John Njogu
Chief Executive Officer
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Mr. Samuel Ochieng
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Mr. Stephen Mutoro
Secretary General
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NAIROBI

Mr. George Abasy-Nengo
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Digital Marketplace Players
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NAIROBI

Mr. Julius Opiio
Board Director
International Chamber of Commerce Kenya
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NAIROBI

Ms. Agnes Kalekye
Chairperson
Media Owners Association
Ground Floor, Britam Centre,
NAIROBI

Dear *Sir / Madam*

RE: STAKEHOLDER ENGAGEMENT ON THE TAX PROCEDURES (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2024); THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024) AND THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2024) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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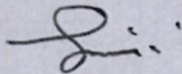
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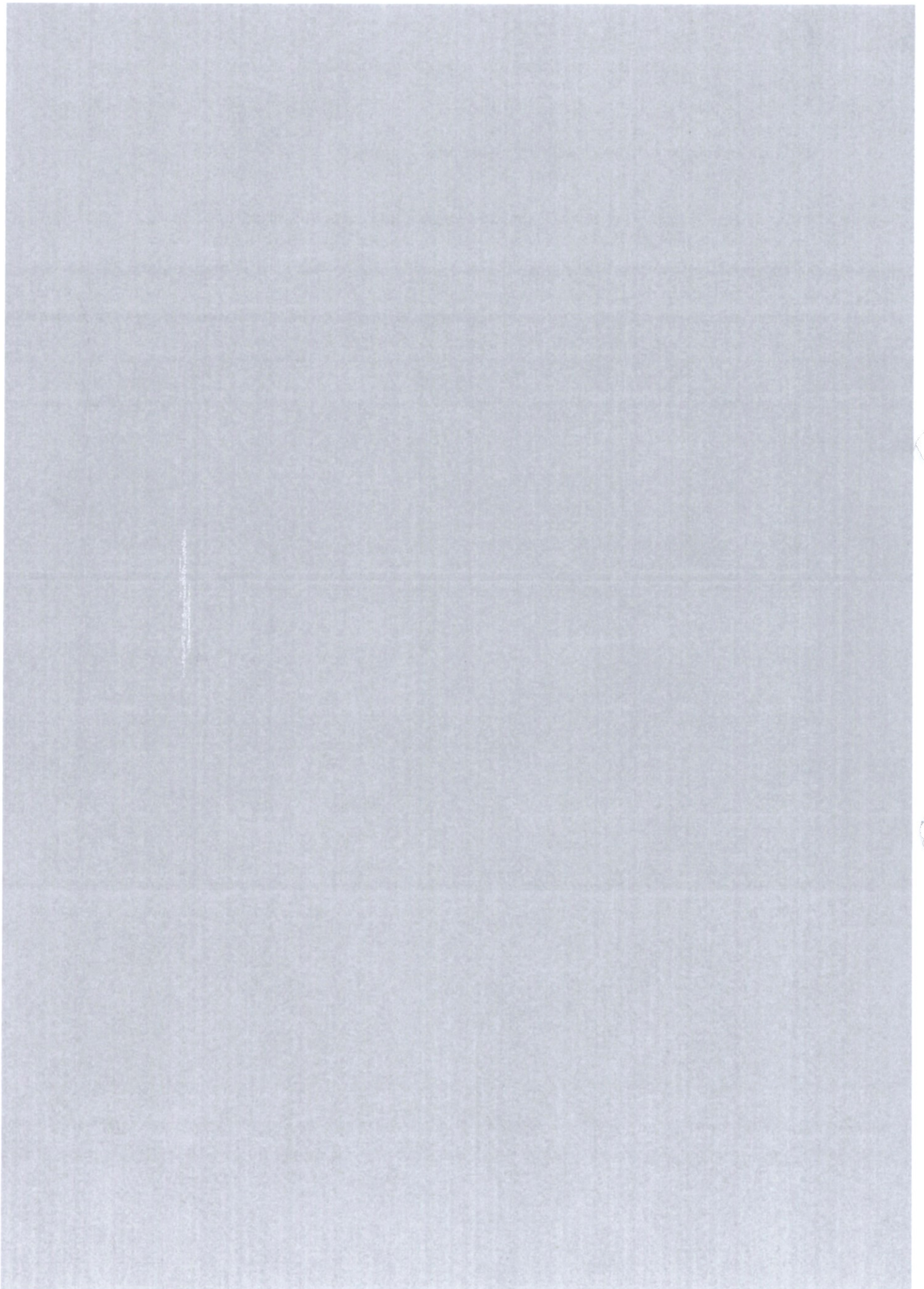
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Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY





Clerk of the National Assembly
Main Parliament Building
P. O. Box 41842-00100
NAIROBI.

22nd November 2024

Advance copy sent via email: finacecommitteena@parliament.go.ke

Dear Mr. Samuel Njoroge,

BANKING INDUSTRY SUBMISSIONS ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024

The Kenya Bankers Association has reviewed The Business Laws (Amendment) Bill, 2024. We have consolidated feedback from our members on the above Bill as highlighted below for your kind consideration.

Section of the Bill	Comment/ Proposal	Justification
Section 3	<p>Management of Foreign Direct Investments (FDI):</p> <p>Potential for Bureaucratic Delays: If the streamlining process is not well-defined, it could lead to bureaucratic delays and confusion.</p> <p>Risk of Inadequate Oversight: Streamlining processes without adequate checks and balances could lead to insufficient oversight. This might increase the risk of non-compliance.</p>	<p>Suspend the proposed section until a comprehensive plan is developed and all concerns addressed.</p>
Section 10	<p>The fines for non-compliance set at Kes. 20M, applicable to CRB may lead to higher costs of obtaining CRB reports by consumers.</p> <p>Individual fines of Kes. 1M in respect to acts relating to a corporate entity is unwarranted.</p> <p>Standardize the penalties for banks with those applied to other corporates. This ensures fairness and equity in the enforcement of compliance measures, preventing any single sector from facing disproportionately severe penalties.</p>	<p>Development of digital CRB mechanisms is ongoing. Players require more time to harmonize the data and to invest in the right seamless infrastructure before the introduction of the proposed penalties.</p> <p>To issue fines that are in line with the nature of non-compliance. Remove individual fines in respect to a corporate offence.</p> <p>Non-compliance with the Banking Act, the Prudential Guidelines, or any directions issued by the Central Bank of Kenya (CBK) will be unfairly costly to banking business.</p>

<p>Section 11</p>	<p>Timelines for increase of core capital is too short.</p> <p>Propose a staggered increase of Kshs.1B every year over the next 8 years and not 3 years as proposed.</p> <p>Allowing ample time presents banks with time to merge more naturally through integration of their strategies without disrupting lending.</p> <p>Reasons:</p> <p><i>Pressure on Smaller Players:</i></p> <ul style="list-style-type: none"> • 24 banks will require to top up their capital (totalling Kshs 150 billion) to meet the proposed requirement and timelines. The affected institutions may struggle to meet the new core capital requirements, potentially leading to forced acquisitions, mergers, or closures. <p><i>Potential reduction in competition:</i></p> <ul style="list-style-type: none"> • Extensive mergers and acquisitions could result in reduced competition in the industry, leading to market dominance by a few large banks and reduced customer choices on service delivery. <p><i>Credit Access Constraints:</i></p> <ul style="list-style-type: none"> • To preserve capital levels over the implementation period, some banks might become more risk-averse and reduce lending, particularly to small and medium-sized enterprises (SMEs) or individuals perceived as of higher risk. This could stifle economic growth by limiting access to credit for key drivers of the economy. <p><i>Economic Disruptions from Consolidation:</i></p> <ul style="list-style-type: none"> • Pushing weaker banks to merge or exit the market could lead to job losses, reduced branch networks, and disruption of services to segments they are serving (usually in regions /segments underserved by larger banks). This could further limit access to financial services, especially in rural or marginalized areas going forward. <p>While the policy aims to enhance stability, the unintended short-term consequences and impacts on smaller banks, credit accessibility, operational priorities, and sector-wide adjustments may be disruptive.</p> <p>A phased approach, coupled with support mechanisms for smaller institutions (as well as new entrants), could mitigate these risks while still achieving the desired stability.</p> <p>Whilst the capital raise is welcome, the current economic shocks (particularly high NPLs that require adequate provisioning by banks that comes at the expense of capital</p>	<p>Proposed timeline may lead to a run on 24 banks – making them unattractive to strategic partners (Investors). The 24 banks employ 6,779 professionals (20.3% of total employment in the banking sector</p> <p>It will occasion credit contraction and the creation of unhealthy competition among financial institutions when lending to private sector is at its lowest levels of 0.4%. The affected banks extended Ksh.539.5 billion in loans to private sector (13% of the total industry loan book) over what top tier well capitalized banks have done</p> <p>The proposed gradual increase of the Core Capital within a period of 3 years is too ambitious for smaller banks as they would need to inject more capital in the next 3 years.</p> <p>Having a longer period to comply would be more plausible and enhance fair competition.</p> <p>Allowing banks to progressively build capital allows them to mature to larger banks in a more sustainable manner and encourage potential investors in the sector.</p> <p>Banks below the proposed minimum core capital have mobilized Kshs 709.9 billion deposits (12.6% of the total banking sector deposits) and these banks occupy 627 premises in their branch network across the country.</p>
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	<p>raise) or sector-specific challenges could make it harder for some banks to meet the milestones in specific years.</p> <p>We propose that there are incentives, such as tax breaks for retained earnings or lower costs for issuing capital, to help banks meet the new core capital requirements without excessive financial strain.</p>	
Section 17	<p>The Bill introduces regulations for credit guarantee companies.</p> <p>It is commendable that the existing credit guarantee arrangements would not be disrupted but rather a solid legal framework would be in place to encourage their growth for enhanced credit growth.</p>	<p>The proposed amendment does not specify whether guarantees, when offered as part of a bank's regular activities, are excluded from the scope of the new credit guarantee business framework.</p>
Section 28	<p>The proposed levy on accreditation, ranging from 3% to 20%, could negatively impact various sectors such as distribution, wholesale, and retail as additional costs could disrupt their operations.</p>	<p>Removing this levy would help maintain the competitiveness of these sectors and avoid additional costs that could be passed on to consumers.</p> <p>Further, additional registration requirement for manufacturers is not pro ease of doing business.</p>
Section 50	<p>Revised definition of 'Employee' and 'Employer' to also include working remotely is supported.</p>	<p>The expanded definitions in the clause are a forward-thinking attempt to adapt employment laws to modern realities, but they introduce ambiguities around worker classification, employer responsibilities, and liability.</p> <p>We propose Introduction of flexible compliance mechanisms and standards that account for the diverse nature of remote, BPO, and ITES work arrangements, ensuring compliance without overburdening employers or stifling innovation.</p> <p>Additionally, we also propose the development of clear guidelines or tests (e.g., degree of control, economic dependence) to differentiate employees from independent contractors, particularly in remote and gig economy roles.</p> <p>In the current digital age, remote working is increasingly being adopted and therefore, there is need to incorporate these realities in the governing legislative framework.</p>

<p>Section 52</p>	<p>We have reservations on expanding definition of workplace to also include remote location as the proposal is not clear on how this will be implemented.</p> <p>This should have a carve-out that exempts employers from liability arising from/under Workmen's Compensation due to injuries at such remote locations <i>unless</i> the employer has built and equipped such locations, else this could lead to unintended consequences arising from a myriad of litigations / claim due to injuries sustained during working hours at places an employer would otherwise not contemplate or authorise e.g., entertainment joints.</p>	<p>The broad definition of "workplace" might lead to interpretation challenges, especially for tasks performed in transient or unconventional locations.</p> <p>We propose that remote work safety guidelines should be developed to handle this ambiguity, and further, OSHA regulations should include specific guidelines for remote workplaces, such as minimum standards for home office setups.</p> <p>Further guidelines should also be developed to clarify "Workplace" boundaries, and to provide clear examples or criteria for what constitutes a workplace in non-traditional settings to avoid ambiguities and potential disputes.</p> <p>Currently under OSHA / WIBA, an employer is expected to ensure safe and conducive working environment/ place of work. How will this be enforced/inspected in instances where employees work from remote places where the employer has no view of the safety measure in case of work-related injuries?</p>
<p>Section 53 (b)</p>	<p>We would propose adoption of Sharia Compliant Terms borrowing from the Income Tax Act, Cap 470 on the following definitions:</p> <ul style="list-style-type: none"> i. Interest. ii. Islamic Finance Return. iii. Islamic Finance Arrangement. 	<p>While the objective of proposal is to facilitate implementation of the Act as the similar definition was first introduced in the Affordable Housing Regulations, 2024.</p> <p>The proposed amendment is vague and ambiguous.</p> <p>Sharia Compliant Facility is also not defined in the Act and there is no reference to Sharia Banking.</p>
<p>Section 54 & 55 Section 90 (2), 90 (3) and 96 (2) of the Land Act</p>	<p>The amendment to Section 90 of the Land Act introduces a shorter timeline for rectifying defaults under charges related to affordable housing, reducing the period from the general three months to forty-five days.</p> <p>The amendment to subsection (3), paragraph (e) of Section 90 of the Land Act introduces a shorter timeline of forty-five days for selling charged land in cases of default related to affordable housing</p> <p>The amendment to subsection (3), paragraph (e) of Section 90 of the Land Act introduces a shorter timeline of</p>	<p>The proposals are welcome for the banking industry.</p> <p>The shorter time frames will encourage uptake of financing for affordable housing projects by banks. Additionally, the reduction in recovery efforts and timelines will ease NPL ratios associated with affordable housing.</p> <p>Additionally, shortened timelines streamline the legal and administrative processes associated with default</p>

<p>forty-five days for selling charged land in cases of default related to affordable housing</p>	<p>management, allowing banks operational efficiency that would have otherwise been compromised on prolonged court proceedings or dispute resolution costs.</p> <p>Banks will also be able to mitigate against the complexities of managing long-standing default cases, freeing up resources for other strategic initiatives.</p>
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Dated this 22nd Day of November 2024



Raimond Molenje
Ag. CHIEF EXECUTIVE OFFICER
KENYA BANKERS ASSOCIATION



KENYA BANKERS
ASSOCIATION

22nd November 2024

Samuel Njoroge, CBS
Clerk of the National Assembly
Main Parliament Building
P. O. Box 41842-00100
NAIROBI.

Advance copy sent via email: finacecommitteena@parliament.go.ke

Dear Samuel,

SUBMISSIONS ON THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.47 OF 2024)

We refer to your public notice issued on 14th November 2024, inviting the public and stakeholders to submit memoranda on the Tax Laws (Amendment) Bill, 2024 to the Departmental Committee on Finance and National Planning in compliance with Article 118(1)(b) of the Constitution.

Kenya Bankers Association hereby submits on behalf of the Banking Industry proposals on The Tax Laws (Amendment) Bill, 2024 for your consideration.

We are happy to provide additional information or clarifications as appropriate. We would also appreciate an opportunity to appear before the Departmental Committee on Finance and National Planning, to further deliberate on the proposals.

I am available for any further discussions on our submissions at your convenience.

Yours faithfully

Raimond Molenje
Ag. CHIEF EXECUTIVE OFFICER

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Telephone: (+254 20) 2221704/2217757/2224014/2224015 Mobile: (+254 02) 0733812770/0711562910 Email: info@kba.co.ke
Website: www.kba.co.ke.

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2. About the Banking Sector in Kenya

According to the Central Bank of Kenya Bank Supervision Report, 2023¹, as at December 31st, 2023, the Kenyan banking sector comprised of 38 Commercial Banks, 1 Mortgage Finance Company, 1 Mortgage Refinance Company, 10 Representative Offices of foreign banks, 14 Microfinance Banks (MFBs), 3 Credit Reference Bureaus (CRBs), 23 Money Remittance Providers (MRPs), 8 non-operating bank holding companies, 32 Digital Credit Providers (DCPs) and 74 foreign exchange (forex) bureaus.

The banking sector staff levels increased by 1,826 (5.1 percent) from 36,107 in December 2022, to 37,933 in December 2023.

The report also indicates that as at 31st December 2023, the gross loans and advances by the Commercial Banks amounted to KES 4.2 trillion, an increase from KES 3.6 trillion as of 31st December 2022.

The largest proportion of the banking industry gross loans and advances as at 31st December 2023 were channeled to the Personal and Household (1.1 trillion), Trade (762.2 billion), Manufacturing (633.5 billion) and Real Estate (505.8 billion) Sectors. In total, these four economic sectors accounted for 71.30% of gross loans in December 2023.

The above statistics highlight, at a high level, the significant impact that the banking sector has to Kenya's economy. This means that the tax policy of this sector must be designed carefully to ensure that the sector continues to thrive and effectively play its role in facilitating other sectors through the advancement of credit.

2.1 Total Tax Contribution of the Banking sector in 2023

As per the 2023 Total Tax Contribution Study² undertaken by the Kenya Bankers Association in conjunction with PwC

- i) The Banking Sector has contributed a total of **KES 824.98 bn** in taxes to the exchequer from 2018 to 2023.
- ii) The 43 banks ((37 banks and 6 Microfinance) that participated in the study made a Total Tax Contribution of **KES 190.26 bn** representing **8.78%** of total taxes collected in Kenya. This remains a significant contribution given that this contribution is made by 43

¹ https://www.centralbank.go.ke/uploads/banking_sector_annual_reports/1035327448_2023%20Annual%20Report.pdf

² <https://www.kba.co.ke/wp-content/uploads/2024/10/KBA-Total-Tax-Contribution-Report-2023.pdf>

taxpayers against a background of approximately 8.1 million³ (as at 30th June 2024) active taxpayers in the country.

- iii) The 43 participating banks bore taxes⁴ /expensed taxes amounting to **KES 102.52 bn in 2023**.
- iv) Taxes collected⁵ on behalf of the Government by the 43 banks who participated in the study amounted to **KES 87.74 bn**. Banks generate the commercial activity that gives rise to the taxes and then collect and administer the taxes on behalf of the Kenya Revenue Authority ("KRA"). In the absence of the banks, these taxes would not have been collected. Therefore, taxes collected are a key indicator of the wider economic contribution by the sector.
- v) **28.59% of corporate taxes** in Kenya were paid by the banking sector in 2023.
- vi) **Value Distribution⁶**-For the 43 banks that participated in the study in 2023, for every KES 100 of profit they made, **they paid KES 57.17 to the government as taxes**, KES 27.80 in employee emoluments and KES 15.03 to shareholders in form of dividends.
- vii) The banking sector's contribution to taxes through PAYE collected amounted to **KES 28.93 bn** representing **7.79% of total PAYE collected in Kenya**.

The above demonstrates the banking sector's significance in its contribution to the exchequer through both payment of taxes as well as a tax collection agent. Consequently, the tax policy of this sector should be carefully structured to ensure that the sector continues to thrive and effectively play its role as a taxpayer, tax collecting agent and most fundamentally availing credit to the economy with ease.

Having regard to the above, we propose that the following sections of the Income Tax Act are amended to provide a conducive environment that spurs growth of the sector and the economy as below.

³ <https://www.kra.go.ke/news-center/press-release/2122-kra-records-11-1-growth-in-revenue-collection>

⁴ are the bank's own contribution in taxes that impact their results, e.g., corporation tax, irrecoverable VAT, VAT on imported services, withholding taxes borne.

⁵ Taxes collected are those which are generated by a company's operations and are collected from others on behalf of the government, e.g., income tax deducted under PAYE, employee portion of Social Security such as NSSF, withholding taxes collected on payments to suppliers, withholding VAT and net VAT.

⁶ "Value distributed" consists of the sum of taxes paid, employee emoluments and incentives and dividends paid to shareholders

3. Proposals from the Banking Sector on The Tax Laws (amendment) Bill,2024

No	Issue	Current situation	Banking Industry Proposal	Justification
1.	<p>5% withholding Tax on Interest earned from Green/Infrastructure Bonds</p> <p>*Section 14 (d) and 15 (b) of the Tax Laws (Amendment) Bill ,2024.</p>	<p>Interest Income earned from Infrastructure/Green bonds (with a maturity of more than 3 years) is exempt from tax as per Paragraph 60 of Part 1 of the First Schedule of the Income Tax Act.</p> <p><i>"Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services: Provided that such bonds, notes or securities shall have a maturity of at least three years"</i></p>	<p>We propose to continue exempting from tax interest income earned Green/Infrastructure bonds by:</p> <ol style="list-style-type: none"> 1. Deleting Section 14 (d) of the Tax Laws (Amendment) Bill ,2024 2. Deleting Section 15 (b) (i) part (w) of the Tax Laws (Amendment) Bill ,2024 3. Deleting Section 15 (b) (ii) (A) of the Tax Laws (Amendment) Bill ,2024. 	<p>Thematic bonds such as Green, So Sustainability and Sustainability-Lin (GSSS), Blue bonds uptake in Kenya behind other markets such as Tanzania, South Africa, Nigeria and Morocco.</p> <p>The introduction of WHT on GSSS Bo will only hamper the momentum developing this market and further erode the gains made over the years. Green bonds will be less attractive subsequently discouraging investment.</p> <p>This taxation will also set the country back in its private investment flow towards sustainable projects that are critical to ensuring the country's transition to a green and inclusive economy. Projects such as green buildings, climate-smart agriculture, affordable homes, waste management and bus rapid transit that have the potential to create numerous jobs and promote social well-being will be negatively affected.</p>

No	Issue	Current situation	Banking Industry Proposal	Justification
2	<p>Proposal to amend definition of the word "Paid" under the Income Tax Act</p> <p>*A request for the item to be included in the bill.</p>	<p>The word paid is defined under Section 2 of the ITA as follows:</p> <p><i>"Paid" includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person.</i></p> <p>The Court of Appeal in the case⁸ of Kenya Revenue Authority and Republic (ex parte: Fintel Limited) provided an interpretation of the definition of the words "paid" and "upon payment" to include accruals.</p>	<p>We propose that section 2 of the ITA be amended to define paid as:</p> <p>Wording in the bill</p> <p>A new proviso be added in the Tax Laws (Amendment) Bill ,2024 immediately after section 2 (d) of the bill and read as follows;</p> <p>(e) by deleting the definition of "paid" and substituting therefor the following new definition.</p> <p><i>"paid" includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person and shall not include accounting accruals."</i></p>	<p>Taxation of Green Bonds in O Markets</p> <p>In Nigeria and Egypt⁷ are tax exempt attract investments in green projects</p> <p>Exclude WHT on Accruals</p> <p>The requirement to withhold and taxes at the point of accrual occasioned cash flow issues for taxpayers given that it makes inaccurate assumption that taxpayers already have the cash to pay suppliers by taking a mere accrual their books. This is not the financial reality as businesses are forced to pay taxes well in advance using the cash meant for business operation because they can raise or plan to pay suppliers.</p> <p>This goes against the principles of withholding tax given that WHT is an agency tax and is supposed to be incurred by the payee and not the payer.</p> <p>This situation has become significantly worse with the requirement</p>

⁷<https://www.deloitte.com/middle-east/en/services/tax/perspectives/law-no2-of-2024-summary.html>

⁸ <https://kenyalaw.org/caselaw/cases/view/167696/>

No	Issue	Current situation	Banking Industry Proposal	Justification																										
3	<p>PAYE Tax Bands of 35% and 32.5%</p> <p>*A request for the item to be included in the bill.</p>	<p>The Finance Act 2023 Introduced two PAYE tax bands to individual rates of tax by amending paragraph 1 of Head B of the Third schedule of the Income Tax Act. The current Individual rates of Tax for PAYE are as below;</p> <p>Annually</p> <table border="1"> <thead> <tr> <th></th> <th>Rate in each shilling</th> </tr> </thead> <tbody> <tr> <td>On the first Ksh. 288,000</td> <td>10%</td> </tr> <tr> <td>On the next Ksh. 100,000</td> <td>25%</td> </tr> <tr> <td>On the next Ksh. 5,612,000</td> <td>30%</td> </tr> <tr> <td>On the next Ksh. 3,600,000</td> <td>32.5%</td> </tr> <tr> <td>On all income over Ksh. 9,600,000</td> <td>35%</td> </tr> </tbody> </table> <p>Monthly</p> <table border="1"> <tbody> <tr> <td>On the first Ksh. 24,000</td> <td>10%</td> </tr> <tr> <td>On the next Ksh. 8,333</td> <td>25%</td> </tr> <tr> <td>On the next Ksh. 467,667</td> <td>30%</td> </tr> </tbody> </table>		Rate in each shilling	On the first Ksh. 288,000	10%	On the next Ksh. 100,000	25%	On the next Ksh. 5,612,000	30%	On the next Ksh. 3,600,000	32.5%	On all income over Ksh. 9,600,000	35%	On the first Ksh. 24,000	10%	On the next Ksh. 8,333	25%	On the next Ksh. 467,667	30%	<p>The Third Schedule to the Income Tax Act is amended.</p> <p>Wording in the bill</p> <p>A new proviso be added in the Tax Laws (Amendment) Bill ,2024 immediately after section 15 (b) (iv)of the bill and read as follows;</p> <p>(v) by deleting paragraph 1 and substituting therefor the following new paragraph—</p> <p>1. The individual rates of tax shall be—</p> <table border="1"> <thead> <tr> <th></th> <th>Rate in each shilling</th> </tr> </thead> <tbody> <tr> <td>On the first Ksh. 288,000</td> <td>10%</td> </tr> <tr> <td>On the next Ksh. 100,000</td> <td>25%</td> </tr> <tr> <td>On the next Ksh. 5,612,000</td> <td>30%</td> </tr> </tbody> </table>		Rate in each shilling	On the first Ksh. 288,000	10%	On the next Ksh. 100,000	25%	On the next Ksh. 5,612,000	30%	<p>to withhold and remit WHT within working days as businesses have to cash to finance the WHT within a short period.</p> <p>Employees and experts engaged at level are reverting to consultc engagements instead of di employment further denying revenu the exchequer since the two PAYE b of 32.5% & 35% are above the corpo tax rate of 30%.</p> <p>The upper earners in Kenya contrit significantly to employment crea through the numerous MSMEs owne; this category thus help to address youth unemployment challer Increase in taxes would lead to collo of these MSMEs financed model thro salaries of high-income earners.</p> <p>The net take home of employees already been significantly reduced in recent past due to the increases in National Social Security Fu introduction of the Affordable Hou: levy as well as Social Health Insurc Levy.</p> <p>Further, the reduction in the net t home of this category of employees</p>
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No	Issue	Current situation	Banking Industry Proposal	Justification
		On the next Ksh. 300,000	32.5%	<p>significantly reduced their ability service bank loans and hence increo NPLs.</p> <p>The spending by upper-incc consumers creates local employer Kenya through personal househ services, school fees, entertainr among others that employ low-w workers. Taxing top earners more resulted in lower spending on th categories, and less local employe</p> <p>Inequity and Public Backlash</p> <p>Perception of Unfairness: Citizens h perceived high personal taxes as un especially when corporations ei lower tax rates, has led genera dissatisfaction.</p> <p>Tax Avoidance and Evasion: Furthe this policy change, there is bound to an increase of cases of Individ seeking loopholes or resort to evasion strategies that may ultima undermine tax compliance and revenues.</p> <p>Shift in Employment Preferences: T personal taxes may discourage for employment and lead to a rise</p>
		On all income over Ksh. 800,000	35%	



No	Issue	Current situation	Banking Industry Proposal	Justification
4	<p>Inclusion of legislation relating to Advance Pricing Arrangements (APA)</p> <p>*A request for the item to be included in the bill.</p>	<p>Currently APs are not recognized in our tax laws. The national Treasury had through Finance Bill 2024(Section 12 of Finance Bill,2024) recommended inclusion of APs in the income Tax Act.</p>	<p>We recommend the inclusion of unilateral, bilateral and multilateral APAs in the Bill. The scope of the APA legislation should cover the below items:</p> <ul style="list-style-type: none"> • Cross border related transactions in scope; • Transfer Pricing methods within scope • Determination of arm's length price • Definition of any relevant terms; and • Critical assumptions and other conditions. 	<p>informal or gig economy work, which often lacks benefits and protections.</p> <p>Lower Entrepreneurial Activity: Aspiring entrepreneurs may find the financial risks outweigh the rewards, stifling innovation and job creation.</p> <p>Global Competitiveness</p> <p>Attractiveness to Global Talent: High personal taxes make a country less attractive to international professional investors, and expatriates compare salaries with lower rates.</p> <p>1. Enhancing tax certainty and predictability</p> <p>APAs provide taxpayers with certainty regarding the transfer pricing methods applied on cross-border related party transactions for a specified period, typically up to five years. This helps taxpayers plan their operations more effectively, reducing the risk of unexpected tax liabilities.</p>

No	Issue	Current situation	Banking Industry Proposal	Justification
				<p>2. Efficient use of resources for taxpayers and revenue authorities</p> <p>Administrative efficiency: For the APAs will streamline the administrative process as adoption of an APA framework will eventually reduce number of resources spent conducting audits. This efficiency would allow KRA to allocate its resources more effectively, focusing on high-risk areas and other critical tax matters.</p> <p>Efficient use of resources by taxpayer Once taxpayers have agreed on an APA framework, the taxpayers will undergo transfer pricing audits for a period of the APA. Audits can't be cost and time consuming and therefore the APA framework will free up resources of the taxpayer.</p> <p>3. Avoidance of double taxation</p> <p>Avoidance of double taxation: Bilateral and multilateral APAs involve agreements between multiple jurisdictions, ensuring that the same transfer pricing approach is applied to transactions across multiple jurisdictions. This coordination will help prevent double taxation, which</p>

No	Issue	Current situation	Banking Industry Proposal	Justification
				<p>be a significant burden for multinational enterprises.</p> <p>International cooperation: Implementing APAs fosters better cooperation between Kenya and other jurisdictions. This collaboration will enhance Kenya's reputation as a transparent and predictable tax environment, attracting more foreign investment.</p> <p>4. Encouraging investment and economic growth</p> <p>Investment attraction: The certainty and predictability offered by APAs will make Kenya a more attractive destination for foreign direct investment (FDI). Investors are more likely to commit to long-term projects when they have confidence in the stability of the tax regime.</p> <p>Economic growth: By fostering a more predictable and stable tax environment, APAs contribute to overall economic growth. Businesses can plan and invest with greater confidence, leading to increased economic activity and job creation.</p> <p>There are three types of APAs that should be included in the Bill: -</p>

No	Issue	Current situation	Banking Industry Proposal	Justification
				<p>Unilateral APAs: Agreements between taxpayer and a single tax authority.</p> <p>Bilateral APAs: Agreements involving taxpayer and two tax authorities typically the taxpayer's home country and another country where the taxpayer operates.</p> <p>Multilateral APAs: Agreements involving the taxpayer and multiple tax authorities covering more than two jurisdictions.</p> <p>We recommend including all three types of APAs in the Bill. This will ensure taxpayers are able to benefit from the APA framework in instances involving either just the KRA or KRA and other revenue authorities hence offering certainty to the taxpayer through multiple avenues.</p>

Hon. Lewis Nguyai

No: 9 Mugumo Lane – Off Lower Kabete Road

P. O. Box 23388 • Nairobi, 00604 Kenya
Phone: +254 722 516 336

MEMORANDUM ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 49 OF 2024) RELATING TO THE PROPOSED AMENDMENTS TO THE MICROFINANCE ACT, CAP. 493C

Pursuant to Article 118 of the Constitution, I wish to propose the following amendments relating to the Microfinance Act, for consideration by the Departmental Committee on Finance and National Planning.

As you are aware, Articles 31, 40 and 46 of the Constitution espouses the right to privacy, the right to property and consumers rights, respectively. Additionally, there have been an increase of cases of borrowers being arbitrarily deprived of their property and entering into unconscionable and unfair borrowing arrangements which are characterized by exorbitant, punitive and excessive interests rates that do not give material disclosure.

Further, the non-deposit taking microfinance business is largely unregulated and there is need to create standards to ensure consumer protection. In view of the foregoing, I propose the following amendments as supported by the relevant justifications, for your consideration—

<i>Clause</i>	<i>Proposed Amendment</i>	<i>Justification</i>
Clause 19	THAT, clause 19 of the Bill be amended in the proposed new section 53 — (a) in subsection (1)— (i) by inserting the words “and recovery” immediately after the words “for lending” appearing in paragraph (a); (ii) by inserting the following new paragraph immediately after paragraph (a)— (aa) disclose all the charges and terms relating to a loan before granting a loan to a borrower;	To ensure that borrowers are informed on the procedure for recovery of debt. Obligates lender to inform borrowers on recovery procedures. To obligate lenders to give full and material disclosure of the charges and terms relating to the loans so that borrowers are fully aware of the consequences of the borrowing arrangement.

Clause	Proposed Amendment	Justification
(b)	in subsection (2) by inserting the words “recover a non-performing loan as a civil debt and” immediately after the words “micro-finance business shall” appearing in the opening statement.	To protect borrowers from the predatory tendencies of the lenders to arbitrary recover debt on loans by subjecting the loan recovery process to the procedures envisaged in the Civil Procedure Act.
(c)	by inserting the following new subsections immediately after subsection (2)—	To protect the borrowers right to privacy and unnecessary disclosure of sensitive information by obligating lenders to comply with provision of the Constitution and the relevant law on data protection.
	(2A) A non-deposit taking microfinance business shall comply with the requirements of Article 31 of the Constitution and the Data Protection Act in lending loans and recovery of debts.	To require lenders to give reasonable notice to borrowers before debt recovery and exercise of the right of lien.
	(2B) A non-deposit taking microfinance business shall issue adequate notice to a borrower of its intention to recover a debt.	To set the limit on the maximum amount that can be recoverable on a non-performing loan by a borrower.
	(2C) A non-deposit taking microfinance business shall recover from a debtor with respect to a non-performing loan the maximum amount prescribed under subsection (2D).	In order to protect the borrowers from predatory tendencies of lenders to collect punitive and excessive interests over and above the principal amount.
	(2D)The maximum amount referred to in subsection (2C) is the sum of the following—	
	(a) the principal owing when the loan becomes non-performing;	The proposed amendment subsequently seeks to protect borrowers who had existing

<i>Clause</i>	<i>Proposed Amendment</i>	<i>Justification</i>
	<p>(b) interest, in accordance with the contract between the debtor and the non-deposit taking microfinance business, not exceeding the principal owing when the loan becomes non-performing; and</p> <p>(c) expenses incurred in the recovery of any amounts owed by the debtor.</p> <p>(2E) This section shall apply with respect to loans made before this section comes into operation, including loans that have become non-performing before this section comes into operation:</p> <p>Provided that where loans become non-performing before this section comes into operation, the maximum amount referred to in subsection (2C) shall be the following—</p> <p>(a) the principal and interest owing on the day this section comes into operation;</p> <p>(b) interest, in accordance with the contract between the debtor and the non-deposit taking microfinance business accruing after the day this section comes into operation, not exceeding the principal and interest owing on the day this section</p>	<p>loans prior to the enactment of the Act.</p>

Clause	Proposed Amendment	Justification
	<p>comes into operation; and</p> <p>(c) expenses incurred in the recovery of any amounts owed by the debtor.</p> <p>(2F) If a loan becomes non-performing and then the debtor resumes payments on the loan and then the loan becomes non-performing again, the limitation under paragraphs (a) and (b) of subsection (2D) shall be determined with respect to the time the loan last became non-performing.</p> <p>(2G) Subsection (2D), shall not apply to limit any interest under a court order accruing after the order is made.</p> <p>(2H) A person who fails to comply with the provisions of this section commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both.</p> <p>(2I) The Central Bank may suspend or revoke a licence of a non-deposit taking microfinance business by written notice to the holder of a licence, if the non-deposit taking microfinance business fails to comply with the provisions of this Act</p> <p>(d) in subsection (3) by inserting the following proviso—</p>	<p>To ensure compliance with the provisions of the Act on consumer protection, the proposed amendments creates an offence to guard against non-compliance.</p> <p>The proposed amendments further provides that the Central Bank may suspend or revoke a licence of a non-deposit taking microfinance business to ensure compliance with the provisions of the Act.</p> <p>The proposed amendments seek to protect consumers from the punitive and</p>

<i>Clause</i>	<i>Proposed Amendment</i>	<i>Justification</i>
	Provided that the interest on a loan shall be charged at an annual rate.	excessive monthly interests by setting the interest at an annual rate.

CONCLUSION

It is proposed that the Departmental Committee on Finance and National Planning does take into consideration the proposed amendments which seeks to protect the Kenyan people from predatory lending. Further, the proposed amendments seek to provide regulatory standards in the non-deposit taking microfinance business.

Submitted for consideration.

Dated the **TWENTY FIRST** day of **NOVEMBER** 2024

Signed:



Hon. Lewis Nguyai