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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT ON:

THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 49 OF 2024) BY HON. KIMANI ICHUNG'WAH,
MGB, MP, THE LEADER OF THE MAJORITY PARTY

VOLUME 2

(PUBLIC/ STAKEHOLDER SUBMISSIONS)

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 DEC 2024	DAY: MON.
TABLED BY:	HON(CPA) KULIA KIMANI, MP (CHAIRPERSON)
CLERK-AT THE TABLE:	MERCY CHUMO



LIST OF THE PUBLIC / STAKEHOLDER WHO SUBMITTED TO THE COMMITTEE

- i. Ashford and Company;
- ii. Association of Special Economic Zone (ASEZ);
- iii. Consumer Federation of Kenya (COFEK);
- iv. Dr. Charles Nzai;
- v. Intertek;
- vi. Kenya Accreditation Services (KENAS);
- vii. Kenya Bureau of Standards (KEBS);
- viii. Kenya Industrial Research and Development Institute (KIRDI);
- ix. Kenya Trade Network Agency (KenTrade);
- x. Kenya Intellectual Property Institute (KIPI);
- xi. Micro and Small Enterprises Authority (MSEA);
- xii. Miima and Company Advocates;
- xiii. Mr. Martin Chesire;
- xiv. Residents of Kericho County;
- xv. Residents of Isiolo County;
- xvi. Residents of Bungoma County;
- xvii. Residents of Mombasa County;
- xviii. Residents of Siaya County;
- xix. Residents of Taita Taveta County;
- xx. Scrap Metal Council (SMC);
- xxi. Scrap Metal Dealers;
- xxii. Shippers Council of East Africa;
- xxiii. Société Générale de Surveillance (SGS)
- xxiv. Special Economic Zone Authority (SEZA);
- xxv. State Department of Investment;
- xxvi. Tatu City; and lastly,
- xxvii. Wamaitha Githinji;

Consumers Federation of Kenya

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November 19, 2024

Mr Samuel Njoroge, CBS
Clerk to the National Assembly
Parliament Buildings
NAIROBI



DDC
29/11/24

Dear Sir,

RE: INCESSANT AMENDMENTS TO THE SCRAP METAL ACT, 2015 AS CONTAINED WITHIN BUSINESS LAWS (AMENDMENT) BILL, 2024

We hereby write to draw your kind attention to our grave concern at the persistent and unjustified schemes aimed at removing the Consumers Federation of Kenya (COFEK) from the Scrap Metal Council through many attempts at amending Section 4(1)(f) of the Act.

The latest such bid is last week's welcome deletion of the proposed amendment of Section 4(1) which was still amended by introducing two Principal Secretaries on the Scrap Metal Council vide the *Miscellaneous Laws (Amendment) Bill, 2024*. COFEK represents key human health and environmental interests in so far as handling, transporting and dealing with scrap metal is concerned.

As the deliberations on the same legislation were going on in the National Assembly, the *Business Laws (Amendment) Bill, 2024* was published. Clause 28(c) of the said Bill is, once again, seeking to amend Section 4(1) of the *Scrap Metal Act, 2015* to remove COFEK among other stakeholders and replace them with conflicted parties namely scrap metal *agents, collectors, smelters and millers* onto the Council of a regulatory agency to have the industry players convert themselves into referees in their own game.

COFEK is a member of the Scrap Metal Council as established by Sec. 4(1)(f)(v) and which section the said the offending clause 28(c) wishes to expunge - without basis, rationale or even according a hearing to COFEK contrary to provisions of Article 47 and 50. It can only qualify as discrimination which is prohibited under Article 27(4) of CoK-2010.

The presence of COFEK on the Council is critical to address public interest matters - principally on environmental and health considerations - especially on minimizing the great danger of the carcinogenic nature of scrap metal. Cases of rising cases of cancer across the country, and within Parliament, should concern the House to do whatever it takes to stem the rise of the scourge.

Accordingly, we write to seek your early, individual, collective and immediate concurrence to have the said amendments touching on *Scrap Metal Act, 2015* and



Mr. Abernigo Njoroge, HOD
Pls bring to the attention of the Trade Comm.
DN 28/11/24

especially the proposed Clause 28(c) to be *Business Laws (Amendments Bill, 2024* - which does not meet the threshold of amendment in such form and manner. Our opposition to the amendment is informed by the following details;

1. The matter of amendment of Section 4(1)(f), vide the *Miscellaneous Laws (Amendment) Bill, 2023*, is at the centre of an active matter before this Honourable Court under HCCC E031 of 2023. COFEK is the Plaintiff and the National Assembly is a party to this matter. Its' own Legal Counsel assured the Court that the Amendments were not to be carried.

2. The proposed *Business Laws (Amendment) Bill, 2024* is by another name an omnibus legislation, carrying all the character, form and content of *Miscellaneous Laws (Amendment) Bill 2023* - only that it now bears a new name christened as *Business Laws (Amendment) Bill, 2024*. In this regard, its fair and neat that the National Assembly takes judicial notice that amending Section 4(1)(f) of the *Scrap Metal Act, 2015* is in breach of the *subjudice* rule. The National Assembly makes laws. It is only fair and just that it embraces and lives within the same.

3. Needless to emphasize, the proposed *Business Laws (Amendment) Bill, 2024* touching on the *Scrap Metal Act, 2015* the proposed deletion of COFEK at Section 4(1)(f) is still subject of HCCC No. E031 of 2023.

4. In Any case, the said *Miscellaneous Laws (Amendment) Bill, 2023* passed at the National Assembly, *suo moto*, deleted the proposed amendment to Section (4)(1) therein, on Tuesday, November 12, 2024 and only added two Principal Secretaries for finance and internal security departments. That accordingly, the proposed Clause 28(b) in the impugned *Business Laws (Amendment) Bill, 2024* is therefore already spent by the amendments carried on Tuesday, November 12, 2024 vide the *Miscellaneous Laws (Amendment), Bill 2023*.

5. That the *Scrap Metal Act, 2015* is domiciled under the Trade Committee of the National Assembly - which after hearing COFEK, the Cabinet Secretary in charge of Industry, Trade and Industry and other stakeholders, and in its Report tabled on the 11th April 2023, resolved and which report is yet to be amended, under clause 37 of the said report observed thus, "The Committee observed that the other stakeholders who had presented submissions were particularly opposed to the amendments and the Committee therefore concurred with the the proposal by the Ministry and the Scrap Metal Council and proposes to delete the amendments to pave way for introduction of the amendments in a comprehensive Amendment Bill to the Scrap Metal Act, 2015

6. That the surprise *Business Laws (Amendment) Bill, 2024* therefore runs counter to overwhelming public participation opinion, on the same matter, as observed and agreed by the National Assembly Committee on Trade, Industries and Cooperatives

7. That by its' nature, the Scrap Metal Council is a regulatory agency. It therefore must have a fair balance between Government and non-state actors. It cannot be filled up by Government and industry players without involvement of consumers.

8. That the proposed removal of COFEK (by proposed deletion of Section 4(1)(f)(v) is against provisions of Section 94 of Consumer Protection Act, 2012 as read together with Article 46 of the Constitution of Kenya is an affront to health and environmental rights of consumers. Consumer representation on a regulatory agency (such as the Scrap Metal Council) is mandatory.

9. Consumer rights are constitutional rights. They carry massive weight especially when it is commonsense that scrap metals have been confirmed to possess highest potential to be carcinogenic and destroy environment - soil, water and air. The inclusion of consumer representatives on the Scrap Metal Council by the framers of the legislation was deliberate and cannot be voided by any excuse.

10. That the proposed removal of COFEK and other stakeholders under Section 4(1)(f) and replacing them with collectors, agents, smelters and millers presents a severe and fatal conflict of interest as the key role of the Scrap Metal Council is to license scrap metal dealers. They cannot, therefore, purport to regulate themselves.

11. That the proposed *agents, collectors and smelters* (supposedly to be included in the Scrap Metal Council) are NOT defined by the Scrap Metal Act, 2024. It is inconceivable that this House would imagine non-existent (legally) and or purported stakeholders and remove bonafide representatives of the consumers, manufacturers and others and purport to replace them with non-defined legal persons on such an important regulatory agency

12. If the National Assembly really wished to allow the vibrancy of the Scrap Metal Council, it would delete Section 7(2) which has reduced the body corporate to be perceived as if it were an extension of the State Department of Industry. It cannot even hire its' own staff yet it has a budget from A-in-A.

13. Finally, overwhelming public interest favours retention of COFEK, KAM and other key stakeholders on the Scrap Metal Council.

We trust that you will agree with our views herein and act accordingly. Thank you.

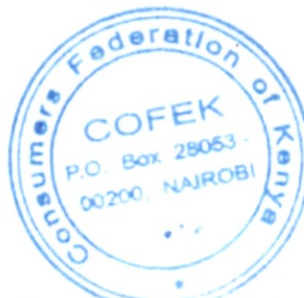
Yours Sincerely

CONSUMERS FEDERATION OF KENYA (COFEK)



Stephen Mutoro
SECRETARY GENERAL

CC:



Rt. Hon. Moses M. Wetang'ula
Speaker
National Assembly
Parliament Buildings, Taifa Road
NAIROBI

Hon Salim Mvurya, EGH
Cabinet Secretary
Ministry of Investments, Trade and Industry
NSSF Block A - 17th Floor
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Dr Dorcas Oduor
Honorable Attorney General
Sheria House
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Dr Juma Mukhwana, CBS
Principal Secretary
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Mr Francis Mugo
Chairman
Scrap Metal Council
NHIF House, 1st Floor
NAIROBI

MEMORANDUM BY MIIMA & COMPANY ADVOCATES TO THE NATIONAL ASSEMBLY OF KENYA REGARDING ISSUES ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024 CONSIDERED BY THE NATIONAL ASSEMBLY

November, 16, 2024

To: The Clerk of the National Assembly
Parliament Buildings Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

The Chairperson
Departmental Committee on Trade, Industry & Cooperatives
Parliament Buildings Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

PREAMBLE

Honourable Chair and Honourable Committee Members,

We respond to your invitation sent out by the Clerk of National Assembly inviting the input of the Public on the following Bill;

THE BUSINESS LAW (AMENDMENT) BILL 2024

As a citizen of Kenya, An Advocate of the High Court of Kenya and Commissioner for Oaths and an expert in International Trade Law and Trade Policy with a keen eye for International Trade and Trade facilitation based on the obligations that Kenya has by virtue of being a signatory to various trade agreements Internationally, Regionally, Bilateral and Multilateral Agreements between Kenya and Other States, I have considered the Bills and hereby submit my considered findings, commentary, analysis and response to the Bills. The Most Favoured Nation principles, The National Treatment Principle, Non-Discrimination, Proportionality The Mutual Recognition Principle and Trade facilitation are the corner stones of International Trade. I believe that any reform must be geared towards the trade facilitation and in compliance with the countries obligations to ensure that there is no retaliation or trade distortion in any sector. In line with this the sector in question is the service sector specifically conformity assessment body and services offered by the conformity assessment body.

CONCERNS AND APPRECIATION OF THE BUSINESS LAW (AMENDMENT) BILL 2024, (National Assembly Bill No. 49 of 2024)

- i. In general terms and as per the publication by The Ministry of Investments, Trade and Industry the main areas of concern are the proposal for the amendment of the Standards Act and the proposed amendment of the Kenya Accreditation Service Act.
- ii. The Bill proposes to amend the Standards Act to insert Section 14D(1) and (2) which will provide for the appointment of inspection bodies. Particularly section 14D(2) provides that the Inspection body shall be resident in Kenya for Tax purposes. Our concern is the appointment of an inspection body in the country of origin this includes

both foreign companies who have no commercial presence in Kenya and those that have a commercial presence in Kenya and discharge their services under Mode 1 and Mode 3. Automatically companies that have been incorporated in Kenya have a tax presence in Kenya however foreign companies do not necessarily have a tax presence in Kenya.

- iii. The Services provided are mainly done by cross-border service provider under mode 1 who are providing inspection services at the country of origin under mode 1 therefore upon a further examination it is apparent that if the inspection companies will have a tax presence in Kenya for tax purposes the same will result in double taxation for the same services being offered.
- iv. The concern is in regards to which taxes will be applied and under what tax regime and how will such taxes be collected. On a first glance reading of the proposed amendment it seems to be a good initiative in terms of increase of tax base and revenue however, while unpacking the proposed amendment there is the glaring danger of double taxation.
- v. To buttress the above concern the Income Tax Act provides under Section 2 that resident in regards to a body of persons means
 - i. The body is a company incorporated under a law of Kenya or
 - ii. That the management and control of the affairs of the body was exercised in Kenya in a particular year of income consideration; or
 - iii. That the body has been declared by the Minister by notice in the Gazette to be resident in Kenya for any year of income.
- vi. Is it then that the requirements have changed to in fact state that for a company offering services in a foreign jurisdiction on behalf of KEBs must have commercial presence in Kenya under mode 3 will this not constitute an additional measure for such services being offered by an inspection body that wishes to participate in the international tender? This opens up the country to retaliation in the sense that other jurisdictions will require that conformity assessment body exporting its services from Kenya must have tax presence in that jurisdiction to participate in international tenders in that particular jurisdiction which will negatively impact export of services and increase the cost of importation of goods in Kenya.
- vii. The Bill further proposed to amend the Kenya Accreditation Act by inserting Section 10A which states that every foreign conformity assessment body that carries out any conformity assessment in Kenya shall be accredited by the Service. This is a mandatory requirement for Foreign conformity assessment body. The rationale for this is that this will ensure that the CABs align with the national regulatory framework and ensure that they set up a local office in Kenya. This will also harmonize accreditation services to national and international standards for consumer protection while at the same time ensuring they pay requisite taxes to support expansion and growth of accreditation services.

- viii. Section 11 of the Kenya Accreditation Act provides that "A conformity assessment body that seeks to be accredited shall apply to the Service for accreditation in the prescribed manner" the terms are general and seem to be voluntary for both foreign and domestic conformity assessment body. However, in the amendment foreign assessment conformity body have been given an addition requirement for a mandatory accreditation by the service.
- ix. The main concern with this particular provision is that Kenya has an Obligation under GATs to ensure that it adheres to the National Principles whereby each member country must treat the services of other member countries no less favourably than its own national products this includes services and service providers. We have taken time to establish whether the services and the service providers fall within the threshold of like services and service providers and we have arrived at the inevitable conclusion that it does. The measure can then be said to be inconsistent with the principle of National Treatment under the GATs.
- x. According to OECD Accreditation Body consist of entities that have recognition by authorities, regulators or industrial or trade organizations within an economy, region or internationally and are engaged in developing, or conducting and administering, accreditation of entities that perform conformity assessment. IAF currently has 75 Accreditation Body Members, 61 of whom are signatories to the IAF Multilateral Recognition Arrangement (MLA) and which represent 85 economies Kenya being one of them.
- xi. By virtue of the above assertion any of the bodies can accredit a conformity assessment body this therefore brings into question the issue of mutual recognition. According to OECD the primary purpose of IAF is two-fold. Firstly, to ensure that its accreditation body members only accredit bodies that are competent to do the work they undertake and are not subject to conflicts of interest. Secondly, to establish mutual recognition arrangements (MLA) between its accreditation body members, which reduce risk to business and its customers by ensuring that an accredited certificate may be relied upon anywhere in the world.
- xii. The MLA contributes to the freedom of world trade by eliminating technical barriers to trade. A single system that ensures that companies with an accredited conformity assessment certificate in one part of the world have that certificate recognised elsewhere in the world. The objective of the MLA is that it will cover all accreditation bodies in all countries in the world, thus eliminating the need for suppliers of products or services to be certified in each country where they sell their products or services. Certified once – accepted everywhere.
- xiii. To sum up the main concern is that the proposed amendment defeats the whole purpose and is inconsistent with the multilateral recognition agreement by subjecting all foreign conformity assessment body to further accreditation by KENAs without taking into consideration the Mutual Recognition Agreement under IAF. By the mere

fact that the said provision is in mandatory terms it only goes without saying that KENAs does not recognize any conformity assessment certificate issued in any part of the world but that issued by KENAs in Kenya. This is a hindrance to market access, entry and penetration which are capital requirements that are hindering Kenya from competing globally and operating as a preferred global exporter and importer of services.

- xiv. The measure is inconsistent with the principle of Non-Discrimination under the World Trade Organization which implies equal treatment for both domestic and foreign CABs. It can only be concluded that foreign CABs are being discriminated upon by making it mandatory for the foreign CABs to be accredited by KENAs and making it optional for domestic CABs.
- xv. In addition, the measure gives an unfair advantage to National Conformity Assessment body whereby accreditation is voluntary as opposed to mandatory, which measure is inconsistent with National Principle. The danger with this particular measure is that the conformity assessment certificates issued by KENAs will be rejected by other jurisdictions causing a shift in the preference to utilize the KENAs services. Last but not least KENAs has essentially stated that foreign conformity assessment body intending to offer such services in Kenya cannot operate under mode 1 that is cross border but must operate under mode 3 by having a commercial presence in Kenya. What then happens to specialized laboratories that have no commercial presence in Kenya but offer testing services in other countries a good example will be foreign laboratories whereby samples are sent outside the country and results are sent back. In the long run the disadvantages outweigh the advantages
- xvi. Lastly the bill proposes to amend the Kenya Accreditation Services Act by inserting Section 12A which is a levy at the rate of 3% of the accreditation services being offered to a third-party by an accredited conformity assessment body. The section goes further to place conditions and penalties in regards to the levy. There is no rationale given for the said levy.
- xvii. Kenya has obligations under international and regional agreements to remove trade barriers and facilitate trade. The levy being proposed is a form of tax that will overburden the tax payers and would increase costs for services offered by conformity assessment body leading to higher prices to access these services. This would in turn make such services uncompetitive in the local, regional and international markets.
- xviii. Accordingly, this measure is inconsistent with the principle of transparency which requires that such measures constitute new regulations being introduced must be reported to WTO for purposes of review by the member states to ensure that it is consistent with the multilateral agreement and that the new measure is not being used as a tool for restricting trade or as an unjustified barrier. The qualification for this is the principle of proportionality which in essence requires that any such new measures introduced must not be more restrictive than necessary to achieve legitimate objectives which is essentially safety, health of consumers. Imposing additional taxes

can be construed as undue costs in the elements or services offered by CABs to third parties.

- xix. According to the WTO, international principles and best practice should serve as trade-facilitating tools, enhance trust between different regulatory systems and contribute to facilitating the acceptance of results of conformity assessment. This should foster trust-building across different regulatory frameworks.

RECOMMENDATIONS TOWARDS THE BUSINESS LAW (AMENDMENT) BILL 2024

Honourable members, after consulting widely with the sector players we now make the following recommendations:

1. That National Assembly entirely withdraws the proposed amendment to the Standard Act specifically the proposed Section 14D(2) for further clarity to be provided by the Kenya Revenue Authority in regards to the issue of tax presence especially in light of the various Double Taxation Agreements. This will create certainty as to which taxes will be paid, how the inspection companies will have tax presence in Kenya and how the same will be remitted. Subsequently a sober conversation has to be initiated as to the implication of imposing such a measure to international trade, cost of doing business and trade facilitation. There is need for further clarity on this particular section without generality as to how it will be applied. The purpose for Double Taxation Agreements between Kenya is to avoid double taxation over the same services being offered it clearly sets out the liabilities in each country to avoid double taxation
2. That National Assembly entirely withdraws the proposed amendment to the Kenya Accreditation Services Act specifically the proposed Section 10A for the following reasons:
 - a) According to the World Bank the elements of conformity assessment include inspection, testing, and certification used in all fields of investigation, innovation, process improvement, productivity, product development, product compliance, and many more. This in turn means that for any of the elements being carried out by a foreign conformity assessment body the same must be accredited by KENAs as long as it is providing the service in Kenya.
 - b) The measure is inconsistent with the principle of National Treatment. The services provided by conformity assessment body for National and Foreign conformity assessment body constitute like services and service providers. To place a mandatory requirement that foreign conformity body must be accredited by KENAs whereas for the National Conformity Assessment body is voluntary puts the foreign conformity body at a disadvantage.

- c) Without prejudice to the foregoing and further to the recommendation herein above Kenya is a signatory to IAF Mutual Recognition Agreement. KENAs in section 6(c) provides that one of the functions of the service is to promote mutual recognition of the competence of accredited bodies and equivalence of accreditation schemes. The proposed amendment is in contravention with the provisions of the Act and its obligations under the Mutual Recognition Agreement.
 - d) In addition, such a proposal as much as it is geared towards increasing the tax base services it might pose a challenge in terms of implementation for instance there are some critical services that are offered in foreign jurisdictions on mode 1 and mode 2 basis in Kenya and do not necessarily have a commercial presence in Kenya especially in regards to laboratories that test pharmaceutical products and prototypes of various equipment's and machines which have been accredited by other conformity assessment body is it then the position that the foreign conformity assessment body have to undertake a further accreditation by KENAs.
 - e) The upshot of this is that other countries will equally not recognize the conformity assessment certificate from Kenya which will in turn require conformity assessment body from Kenya exporting its services to another jurisdiction under modes 1, 2 and 3 to undergo a further accreditation. This is not only a hindrance to trade in services in this particular sector but it is also a barrier to market entry, market access and market penetration and does not in any way facilitate international trade.
3. That National Assembly entirely withdraws the 3% accreditation levy proposed in Section 12A for reasons that the purpose of the levy is not clearly. The conformity assessment body is already taxed on the services offered to third parties by the Kenya Revenue Authority. A further tax in form of a levy will unnecessarily burden the tax payer which tax will be passed on to the consumers making the services offered more expensive and not beneficial to the consumer.
 4. To buttress the above recommendation the purpose of the levy cannot be for purposes of sustaining an institution. KENAs is a member of the IAF and performs the same functions as other member of the IAF, AFRAC AND ILAC Mutual Recognition arrangement body with the same international standards applicable to all the members. It is therefore the position that the role of accrediting private and public CABs is not a preserve of KENAs internationally therefore its functions should not attract an unnecessary burden on the tax payer who are already overburdened on the basis of the services it provides alone.

CONCLUSION

Honorable Members, full support and confidence is pledged in you processing this Bill and we pray that the concerns that have been set out herein above will be taken into consideration prior to the bill being submitted to parliaments and I will be more than willing to submit further information if it shall be required

Signed by

Lorna khamusa Miima thisday of2024

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27/11/24

Our Ref: KENAS/CEO/19

(2) Mr. Abenayo Wairike, HoD 26th November 2024

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
P. O. Box 41842-00100
NAIROBI
Email: cna@parliament.go.ke
businesslaws@parliament.go.ke

To bring to the attention
of the Dept. Comm. on
Trade. JM 28/11/24
advance copy by email

Dear Hon. Njoroge,

**INVITATION TO SUBMIT MEMORANDA ON BUSINESS LAWS (AMENDMENT) BILL,
2024 (NATIONAL ASSEMBLY BILL NO. 49 OF 2024)**

Reference is made to the subject, your letter Ref: NA/DDC/TRADE/2024/149 dated 21st November 2024 inviting the Service to submit Memoranda on the proposed amendments to the Standards Act and the letter Ref: NA/DDC/TRADE/2024/150 inviting the Service to submit Memoranda on the proposed amendments to the Kenya Accreditation Service Act.

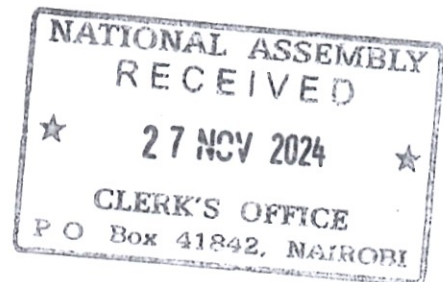
Further reference is made to the Trade Committee Public Hearings on 25th November 2024 and questions raised therein by the Honourable Member of Parliament for Mathare Constituency Hon. Anthony Oluoch.

Enclosed herewith is the Service's memorandum on the proposed amendments to the Kenya Accreditation Service Act and the Standards Act. The responses to the questions raised by Hon. Anthony Oluoch during the Public Hearings on 25th November 2024 will follow.

Yours Sincerely,


Dr. Walter Ongeti
CHIEF EXECUTIVE OFFICER
WON/wny

Copy to: Hon. Salim Mgala Mvurya, EGH
Cabinet Secretary
Ministry of Investments, Trade and Industry
NAIROBI



Hon. Dorcas Oduor
The Attorney General of the Republic of Kenya
Sheria House, Harambee Avenue
NAIROBI

Dr. Juma Mukhwana, PHD, CBS
Principal Secretary
Ministry Of Investment, Trade and Industry
NAIROBI

IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024

KENYA ACCREDITATION SERVICE (KENAS) MEMORANDUM ON PROPOSED MISCELLANEOUS AMENDMENTS TO THE KENYA ACCREDITATION SERVICE ACT, AND THE STANDARDS ACT IN THE BUSINESS LAWS AMENDMENTS BILL, 2024

A. Memorandum on the Kenya Accreditation Service Act

1. The Service supports the amendments proposed by the National Assembly Majority leader to the Kenya Accreditation Service Act as captured in Section 26 (introducing a new Section 10A to the Act) and Section 27 (Introducing a new section 12A to the Act). **Table 1** below captures the justifications informing our support for the proposed amendments.

Table 1: Justifications informing the Service’s support to the proposed amendments to the Kenya Accreditation Service Act

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
1.	<p>Clause 26 proposing insertion of Section 10A to the Kenya Accreditation Service Act that reads:</p> <p>10A. Accreditation of Foreign Conformity Assessment Bodies operating in Kenya</p> <p>Every Foreign Conformity Assessment Body that carries out any conformity assessment activity in Kenya shall be accredited by the Service. New</p>	<p>Section 10A be maintained as proposed by the National Assembly Majority Leader.</p>	<p>Mandatory accreditation of foreign Conformity Assessments Bodies offering accreditation in Kenya will ensure that the CABs align with the national regulatory framework and ensure that they set up a local office in Kenya (the accreditation site) to host their auditors and impartiality committee that will involve local stakeholders in handling impartiality issues that can arise from the activities of the Conformity Assessment Bodies.</p>
3	<p>Clause 27 proposing insertion of Section 12A to the Kenya Accreditation Service Act that reads:</p> <p>12A Accreditation Levy</p> <p>(1) There is imposed a levy to be known as the</p>	<p>Section 12A be maintained as proposed by the National Assembly Majority Leader.</p>	<p>The accreditation levy will enable the service to develop accreditation in Kenya and to set up a fund for SMEs seeking accreditation to apply for consideration for accreditation.</p>

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
	<p>Accreditation Levy which shall be at the rate of three percent of the value of any accredited service offered to a third party by an Accredited conformity assessment body.</p> <p>(2) The Cabinet Secretary may, by notice in the Gazette, Prescribe –</p> <p>(a) The evidence by which the liability of a conformity assessment body to the accreditation levy or his discharge of that liability may be established.</p> <p>(b) The time at which the accreditation levy shall become due; and</p> <p>(c) the manner in which the accreditation levy shall be received by the service.</p> <p>(3) A person who fails to pay the accreditation levy within the prescribed time shall be liable to a penalty of a sum equal to five per cent of the amount due for each month or part of a month thereof that amount remains unpaid.</p> <p>(4) A person who fails to pay the accreditation levy commits an offence.</p> <p>(5) Any person who is aggrieved by any act or decision made</p>		<p>Further, the levy will spur SMEs demand for accreditation and growth in their business since they will increase their business opportunities beyond the borders as well as improved quality processes thus maximizing resources and revenues.</p>

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
	under accreditation levy order may appeal to the Tribunal		

2. Further, the Service hereby proposes an additional amendment to the Act as set out **table 2** below

Table 2: New proposed amendments to the Kenya Accreditation Service Act

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
1	-	Amend Part IV currently reading: PART IV: ACCREDITATION To read: PART IV: ACCREDITATION AND TRAINING	This amendment aims to accommodate the proposed amendments (15A below) touching on training which is a mandate of the Service pursuant to Section 6(g) of the Kenya Accreditation Service Act
2	-	Introduce a new 15A to the Bill to read as follows 15A Training 1) All training relating to accreditation of conformity assessment services shall be conducted by the Service or by an entity approved by the Service. 2) The Service shall develop and implement a Continuous Professional Development program for all persons seeking to offer trainings in conformity assessment.	There is a proliferation of entities and persons offering training in conformity assessment activities that are unregulated. The unregulated trainings offered are negatively impacting the quality of Conformity Assessment in Kenya. These amendments will help regulate conformity assessment training and trainers in in Kenya.

B. Memorandum on the Standards Act

1. The Service has no reservations on the proposed amendments to the Standards Act as captured in Clause 20 (proposing insertion of a new Section 5A into the standards Act); Clause 21 (proposing repeal and replacement of Section 10C of the Standards Act; Clause 22 (proposing insertion of a new section 10D in the Standards Act), and Clause 23 of the Bill (Proposing repeal and replacement of Section 12 of the standards Act).

2. The Service hereby submits a memorandum to the proposed amendments to the Standards Act under Clause 24 of the Bill (Proposing insertion of a new sections 12A and 12B in the Standards Act); and Clause 25(Proposing insertion of a new Section 14D in the standards Act) as set out in **Table 3** below.

Table 3: Proposed amendments Clauses 24 and 25 of the Bill

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
1	<p>Clause 24 in respect to insertion of Section 12A (3) that provides;</p> <p><i>(3) Only laboratories that have been assessed by the Bureau and found to have met criteria of assessment for designation of the laboratories shall be designated as such.</i></p>	<p>It is proposed that Section 12A (3) be deleted</p>	<p>Accreditation set out in 12A (2) is rigorous and should be the criteria by which laboratories shall be designated. Further assessment by the Bureau for designation negates the spirit and rigor of accreditation assessment and will result in duplication of effort and cost to the entities concerned resulting resource wastage.</p>
2	<p>Clause 24 in respect to insertion of Section 12B (3) that provides;</p> <p><i>(3) the Bureau may, where necessary, license and register competent bodies to provide calibration services and issue</i></p>	<p>It is proposed that Section 12B (3) be amendment to read as follows;</p> <p><i>(3) the Bureau may, where necessary, license and register competent bodies duly <u>accredited under the Kenya Accreditation Service Act to</u></i></p>	<p>KENAS is mandated to accredited Calibration laboratories, the means by which competence is confirmed and attested for their conformity to set standards.</p>

S/NO.	CLAUSE/PAGE OF THE BILL	PROPOSAL	JUSTIFICATION
	<i>certificates subject to the Kenya standards.</i>	<i>provide calibration services and issue certificates subject to the Kenya standards.</i>	The amendment is in line with the amendment carried in Section 12A (2).
3	Clause 25 in respect to insertion of Section 14D (2) that provides: <i>(2) The inspection body shall be resident in Kenya for tax purpose</i>	It is proposed that Section 14D (2) be amendment to read as follows; <i>(2) The inspection body shall be <u>duly accredited under the Kenya Accreditation Service Act</u> and shall be resident in Kenya for tax purpose.</i>	Mandatory accreditation of foreign Inspection bodies will ensure that they align with the national regulatory framework. Further, this will also ensure that the inspection bodies set up a local office in Kenya (the accreditation site) to host their auditors and the impartiality committee that will involve local stakeholders in handling impartiality issues that may arise from activities of the inspection bodies.

SIGNED 

Dr. Walter Ongeti
Chief Executive Officer

Kenya Accreditation Service

DATE: 26th November 2024

[NOVEMBER, 2024]



THIRTEENTH PARLIAMENT –
NATIONAL ASSEMBLY

(THIRD SESSION) THE

IN THE MATTER OF CONSIDERATION

OF THE BUSINESS LAWS

(AMENDMENT) BILL, 2024

(Pursuant to Articles 1(2), 10(2)(a) And 118 of the Constitution)

Section A — Object of the Bill

The **Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the **National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 503); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).**

Section B—Personal Information

- Name: Solomon Mahinda, Vice Chairman, Association of Special Economic Zones - Kenya, P.O.BOX 22246-00505, NAIROBI, +254 113 867 309
- Gender: ASSOCIATION
- Constituency: NAIROBI
- County: NAIROBI
- Identification No. (National ID/Passport/Kenyan Driving Licence): _____

Section C—Views on Bill

- What are your views on the Bill? (Fill Table as appropriate)

S/No.	Clause/Page of the Bill	Proposal	Justification
I.	Clause 30	Section 4 of the Special Economic Zones Act is amended as follows — in subsection (6) inserting the following new paragraph immediately after paragraph (j) — (k) such other sectors as shall be prescribed by the Cabinet Secretary	The amendment to Section 4 subsection (6) is proposed to provide flexibility to the Government to incorporate additional/ emerging sectors as the case may be from time to time without need to amend the law every time.

		on the recommendation of the Authority.	
2.	New Clause	<p>Section 6 of the Special Economic Zones Act, 2015, is amended in paragraph (b) by —</p> <p>(a) deleting the word “Kenya” and substituting therefor the words “the customs territory”;</p> <p>(b) inserting the following proviso –</p> <p>Provided that –</p> <p>(i) goods whose content originates from the customs territory shall be exempt from payment of import duties;</p> <p>(ii) goods whose contents partially originates from the customs territory shall pay import duties on the non-originating components subject to the customs procedures.</p>	<ul style="list-style-type: none"> • This amendment to Section 6 of the Bill is intended to align our market access rules with the EAC framework, including the Treaty establishing the EAC, its protocols, and the recently approved EAC SEZ Policy and Regulations by the Sectoral Council on Trade, Industry, Finance, and Investment (SCTIFI). The amendment aims to enhance Kenya's competitiveness and standardize SEZ practices across the region. • This provision also expands the catchment area for duty-free and tax-free sourcing of raw materials, facilitating value addition within our zones.
3.	Clause 31	<p>The Special Economic Zones Act is amended in Section 8 by inserting the following new paragraph immediately after paragraph (4) —</p> <p>“(5) Goods of any description sold to any person that remain within a customs-controlled areas of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.</p> <p>Provided that –</p> <p>“For the sale of special economic zone housing, a one-off surcharge of 2.5% on the value shall be payable by the Developer, Operator and Enterprise on the first sale of a special economic zone housing.</p>	<ul style="list-style-type: none"> • Amendment to the existing Section 8 of the Bill to include the proviso which aims to clarify that goods traded within the customs-controlled areas of a special economic zone will be treated as duty-free. This approach is intended to stimulate business activities within the zones, fostering a circular economy and encouraging complementarity. It allows one factory's products or byproducts to be seamlessly utilized as raw materials by another company, thereby creating additional value. • This amendment is designed to align Kenya's SEZ framework with global best practices, facilitating the full implementation of the "Live, Work, and Play" model. This model integrates residential, commercial, and recreational spaces within SEZs,

			<p>thereby enhancing the quality of life for employees and residents.</p> <ul style="list-style-type: none"> The provision introduces a fee on the value of SEZ housing developments, ensuring equitable treatment and avoiding bias against non-SEZ housing projects. By fostering affordable housing solutions, this amendment aims to support workforce well-being and attract high-value investments, a strategy successfully implemented in established SEZs globally, such as those in Singapore, China, and the UAE.
4.	Proposed New Clause	<p>Section 27 of the Special Economic Zones Act is amended –</p> <p>(a) in subsection (2) by:</p> <p>(i) deleting the words “the Commissioner of Customs” and substituting therefor the words, “operator”; and</p> <p>(ii) by inserting the words, “and inform the Commissioner of Customs” at the end of the paragraph after the words “renew the licence”.</p> <p>(b) In subsection (5) by deleting paragraph (d) and substituting therefor the following new paragraph —</p> <p>(d) be valid for 10 years subject to inspection by the Authority and payment of annual licence fees.</p>	<ul style="list-style-type: none"> The amendment to Section 27 subsection (2) is meant to ease the bureaucratic licensing process that industry stakeholders have experienced over time by mandating the responsibility to give approvals on the Authority based on a recommendation from the Operators. The amendment to subsection (5) seeks to grant a 10-year SEZ license to Special Economic Zone Developers, Operators, and Enterprises upon approval by the Authority. This provision aims to provide clarity and long-term certainty to investors regarding the duration of the license, thereby enhancing the predictability of the SEZ framework. A 10-year licensing period aligns with international best practices in SEZ management, offering a stable operational timeline that encourages substantial investments, strategic planning, and long-term commitments. Additionally, this

			amendment ensures that investors can focus on scaling operations and achieving economic objectives without frequent renewals or administrative interruptions.
5.	Clause 36	Delete clause 36 of the Bill which proposes to amend Section 35 of the Special Economic Zones Act by inserting a new sub section 5.	<ul style="list-style-type: none"> • Provision to be deleted - The spirit of the amendment was to confer 10 years licence to Special Economic Zone Developer, Operator or enterprise and it has no relation to incentives and tax benefits which are conferred under other tax laws. • It is proposed that such an amendment to capture the spirit be effected on the proposed amendment to Section 27 subsection (5) paragraph (d) as proposed in our document above.
6.	Proposed new Clause	<p>The First Schedule to the Special Economic Zones Act is amended by inserting the following new paragraph immediately after paragraph (h) —</p> <p>(i) any other zones that be gazetted by the Cabinet Secretary from time to time on the recommendation of the Authority.</p>	The amendment to the First Schedule is meant to add a new paragraph (i) to provide flexibility to incorporate additional emerging zones as the case may be from time to time without need to amend the law.

SIGNED  DATE: 20th November, 2024

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Appreciation: *The National Assembly appreciates your participation in this process.*

"For the Welfare of Society and the just Government of the People"



[NOVEMBER, 2024]



THIRTEENTH PARLIAMENT - (THIRD SESSION)
THE NATIONAL ASSEMBLY

IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024

(Pursuant to Articles 1(2), 10(2)(a) And 118 of the Constitution)

Section A – Object of the Bill

The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024) is a Bill sponsored by the Leader of the Majority Party which seeks to amend the National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 502); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).

Section B—Personal Information

- Name: SPECIAL ECONOMIC ZONES AUTHORITY_____
- Gender: BODY CORPORATE_____
- Constituency: STAREHE_____
- County: NAIROBI_____
- Identification No. (National ID/Passport/Kenyan Driving Licence): _____

Section C—Views on Bill

6. What are your views on the Bill? (Fill Table as appropriate)

S/No.	Clause/Page of the Bill	Proposal	Justification
1.	Amendment of section 4 of Cap 517A Page 111 (para 29)	Section 2 of the Special Economic Zones Act is amended by deleting the definition of "business processing outsourcing" and substituting therefor the following new definition— "business process outsourcing" means the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement amongst other services, and includes the delegation of one or more information technology-intensive business processes to an external provider	The amendment is supported to align the definition of BPO with Employment laws
2.	Amendment of section 4 of Cap 517A Page 111 (para 30)	1. Section 4 of the Special Economic Zones Act is amended as follows — In subsection (2) by inserting the following new paragraph immediately	This content is misplaced here. It should not have been included in the section describing the gazette notice. Note a indicates that the notice should define "size of the gazetted project."

		<p>after paragraph (b)</p> <p>b) The Cabinet Secretary shall, on the recommendation of the Authority, set the minimum acreage of land and minimum investment amount to be invested in that land, for the land to be considered for declaration as a special economic zone.</p>	<p>Therefore, Issues concerning investment thresholds do not belong in a gazette notice; they are addressed under Section 5.</p> <p>Thus proposed the amendment reads as follows:</p> <p>Section 5 of the Special Economic Zones Act is amended as follows</p> <p>—</p> <p>Inserting a new subsection (l) immediately after paragraph (k)</p> <p>The Authority recommend to the Cabinet Secretary the minimum acreage of land and minimum investment amount to be invested in that land, for the land to be considered for declaration as special economic</p> <p>The justification for setting minimum land and investment thresholds is to provide clarity on the types of investments to be onboarded and facilitated under the SEZ framework. These thresholds ensure the attraction of high-value investments characterized by substantial investment capital, job creation, and technological transfer. Additionally, the minimum land requirement helps prevent land in public zones from being held for speculative purposes with investors holding on land that is not bringing value to the government.</p>
3.	Amendment of section 8 of Cap 517A page 111 para 31	<p>The Special Economic Zones Act is amended in Section 8 by inserting the following new paragraph immediately after paragraph (4) —</p> <p>“(5) Goods of any description sold to any person that remain within a customs- controlled areas of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.</p>	<p>This proviso aims to clarify that goods traded within the customs- controlled areas of a special economic zone will be treated as duty- free. This approach is intended to stimulate business activities within the zones, fostering a circular economy and encouraging complementarity. It allows one factory's products or byproducts to be seamlessly utilized as raw materials by another company, thereby creating additional value.</p>
4.	Amendment of section 11 of Cap 517A page 1112 para 32	<p>4. Section 11 of the Special Economic Zones Act is amended —</p> <p>(a) in paragraph (d) by inserting the words “and the minimum</p>	<p>Section 11</p> <p>The SEZ law recognizes that there will be entities and service providers that need to operate within SEZs but are not intended to benefit from SEZ incentives.</p>

		<p>investment value" immediately after the word "threshold";</p> <p>(b) by inserting the following new paragraph after paragraph (f)—</p> <p>(fa) review applications and grant special economic zone service permits;</p> <p>(c) by deleting paragraph (h) and substituting therefor the following new paragraph—</p> <p>(h) establish and administer a "one-stop" shop through which special economic zone enterprises can channel all their applications for permits, approvals, licences and facilities not handled directly by the Authority, coordinating with such other Government or private entities as may be necessary through agreements with the entities or procedures defined in implementing regulations or such other prescribed procedures;</p> <p>(d) by deleting paragraph (m) and substituting therefor the following new paragraph—</p> <p>(m) suspend or cancel the licence of a special economic zone enterprise or a special economic zone developer which is in violation of this Act, the East African Community Customs Management Act, 2004 or any other applicable law.</p>	<p>Section 11(m) on circumstances under which the Authority can recommend suspension or cancellation of licenses of the special Economic zone entities, no reference is made to other applicable laws, except; this Act, East African Community Customs Management Act and the Value Added Tax Act.</p>
5.	Amendment Section 28 of Cap 517A page 1112 paragraph 33	Section 28 of the Special Economic Zones Act is amended in paragraph (a) by inserting the words "or a public entity" immediately after the word "Kenya".	This provisions is to allow public entities desirous of setting up SEZ to do so in accordance to their mandate
6.	Amendment Section 30 of Cap 517A Page 1112 para 34	<p>The Special Economic Zones Act is amended by inserting the following new section immediately after section 30—</p> <p>Issuance of Special Economic Zone Business Service Permit</p> <p>30A.</p> <p>(1) A person who intends to provide a service within a special Economic zone for which no incentive or benefit</p>	<p>The SEZ law recognizes that there will be entities and service providers that need to operate within SEZs but are not intended to benefit from SEZ incentives.</p> <p>An additional administrative penalty</p>

		<p>accrues under this Act, shall apply in the prescribed form to the Authority for a special economic zone business service permit or for a renewal of the permit.</p> <p>(2) The Cabinet Secretary may prescribe in regulations the rights and obligations which shall apply upon the issuance of the permit issued under subsection</p>	<p>has been increase to encourage compliance</p>
7.	<p>Amendment Section 33 of Cap 517A para 1113 para 35</p>	<p>Section 33 of the Special Economic Zones Act is amended—</p> <p>(a) in subsection (1), paragraph (b), by—</p> <p>(i) deleting the word "and" immediately after the expression "special economic zone operators" and substituting therefor the expression "special economic zone service permit holders"; and</p> <p>(ii) inserting the expression "and residents" immediately after the word "enterprises"</p> <p>(b) in subsection (2) paragraph (b), by deleting the words "enclosures" and substituting therefor the word "measures"</p> <p>(c) by deleting subsection (4), and substituting the following new subsection—</p> <p>(4) A special economic zone developer or a special economic zone operator who fails to maintain adequate and proper accounts and other records as required by this section is liable to payment of an administrative penalty not exceeding five million shillings or such administrative sanction as the Authority may deem fit, or both.</p>	<p>This amendment to give effect to the service permit holders</p> <p>The amend in section 33 (4) is to enhance compliance by increasing the penal effect of non-compliance.</p>
	<p>Amendment to Section 35 of Cap 517A page 1113 para 36</p>	<p>(5) Notwithstanding any changes in any other written law, the incentives and tax benefits granted to a Special Economic Zone developer operator or enterprise under this Act shall be for a period of ten years from the date of issuance of a licence</p>	<p>The amendment is supported as the spirit is to give certainty to investors:</p> <p>However, we are proposing the clause to be amended as follows to give effect to the spirit of the amendment</p> <p>"(5) The tax incentives granted to a licensed special economic zone developer, operator or enterprise under this Act, respective tax laws or any other written law shall continue to apply for a period of ten years from the date of</p>

		<p>issuance of the licence, notwithstanding any changes in this Act or any other written law.</p> <p>Provided that upon lapse of the ten years period, the tax incentives available under the provisions of this Act or any other written law shall apply to the special economic zone developer, operator or enterprise.</p> <p>The key concern for investors wishing to set up in an SEZ is uncertainty of our tax laws which change every year. The uptake of SEZ will increase if the investors are assured of a stable and certain tax framework. The proviso is to provide the much-needed certainty to investors that the tax incentives afforded under the SEZ Act will continue applying to them for at least 10 years once they set up and commence operations in an SEZ.</p>
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SIGNED _____ DATE: _____ November, 2024

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Appreciation: The National Assembly appreciates your participation in this process.

"For the Welfare of Society and the Just Government of the People"



MICRO AND SMALL ENTERPRISES AUTHORITY

Tel: 020-340006
Cell: +254 700 666 000
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When replying, please quote:

Utalii House, 10th Floor Left Wing
Utalii Lane, Along Uhuru Highway
P.O. Box 48823 – 00100
NAIROBI
KENYA

REF: MSEA/6/05/1333

Date: 27th Nov 2024

CLERK OF THE NATIONAL ASSEMBLY,

Parliament Buildings

P.O BOX 41842-00100,

NAIROBI.

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

Reference is made to the above subject matter, your letter dated 21st November, 2024 and newspaper advertisement calling for views from the public published on 14th November, 2024. Having read and understood the same, the Micro Small Enterprises Authority wishes to submit its views thereon as follows:

1. The Legal mandate of MSEA.

The Micro and Small Enterprise Authority (MSEA) is a State Corporation established under the MSE Act No. 55 of 2012 with the primary mandate of promoting the growth, development and regulation of micro and small enterprises (MSEs) in the country. MSEA's core responsibilities include:

Formulating and reviewing policies and programs to support micro and small enterprises; b) Monitoring and evaluating the implementation of these policies and advising the government on appropriate actions; c) Coordinating and harmonizing activities between public and private sectors for the growth of MSEs; d) Promoting research, product development, and patenting in the MSE sector; e) Mainstreaming youth, gender, and persons with disabilities into MSE activities and programs; f)

Mobilizing resources for the development of the MSE sector; g) Promoting market access, innovation, and product development for MSEs; h) Developing capacity-building programs to strengthen MSE skills and knowledge; i) Facilitating technology development, acquisition, and transfer to MSEs; j) Creating systems for collecting comprehensive, disaggregated data on MSEs for informed planning.

In fulfilling its mandate, MSEA operates under the **MSE Act No. 55 of 2012** and other applicable legislation. The Authority's insights and recommendations regarding the **Business Laws (Amendment) Bill, 2024** are outlined below.

2. Observations and recommendations

2.1 The Standards Act, Cap 496.

2.1.1 Registration of Manufacturers;

The proposed amendment to Section 5 introduces a requirement for manufacturers to register with the **Kenya Bureau of Standards (KEBS)** and pay a prescribed fee in addition to the standards levy under Section 10B.

2.1.2 Observations:

- a) Manufacturers are already registered as companies or associations under other laws, such as the **Companies Act** and **MSE Act No. 55 of 2012** respectively. Small-scale manufacturers, especially MSEs, face undue burdens from overlapping and multiple registration requirements.
- b) The proposal contradicts the government's **BETA Agenda**, which prioritizes the growth of small and medium-sized businesses and job creation. It will also negate government efforts to increase manufacturing sector contribution to GDP to 15%.

2.1.3 Recommendations:

- a) **Avoid Duplication of Registration Requirements:** Manufacturers already registered under existing legislation, such as the Companies Act or the MSE Act, should not be subjected to additional registration requirements with KEBS. This ensures a streamlined regulatory framework and reduces unnecessary administrative burdens.
- b) **Waive Standards Levy for MSEs:** Exempt MSEs from paying the standards levy. Instead, reallocate these funds to subsidize cost of MSEs standardization processes and provide capacity-building initiatives that directly support MSE growth. This approach aligns with national efforts to foster entrepreneurship and strengthen local manufacturing.

2.2 Establishment of Laboratories

2.2.1. The proposal for KEBS to establish laboratories is commendable as it decentralizes product testing and improves accessibility for MSEs. This will reduce cost and ease burden of rural small scale manufactures who had to travel long distances to get these services

2.2.2. Recommendation:

KEBS should collaborate with existing public laboratories, such as those at **KIRDI** and public universities, instead of establishing new facilities. This approach reduces costs and avoids duplication of resources.

2.3 Accreditation Levy

2.3.1 The proposed accreditation levy of **3% of the value of accredited services** adds to the already high cost of manufacturing.

2.3.2 Observations:

- a) Multiple levies increase production costs and discourage local manufacturing.
- b) This measure undermines efforts to promote Kenyan-made products and could lead to market flooding by foreign products.

2.3.3 Recommendation:

Streamline levies to reduce the financial burden on manufacturers, particularly MSEs, and align policies with the "Buy Kenya, Build Kenya" initiative.

2.4 Public Procurement and Asset Disposal Act, 2015

2.4.1 Participation of MSEs in Preferences and Reservations.

The proposed amendment to Section 157 recognizes MSEs as a group eligible for reservation and preference in public procurement. This inclusion is a positive step toward empowering MSEs and enhancing their access to government opportunities.

2.4.2 Recommendation:

- a) MSEs registered with the Micro and Small Enterprise Authority should qualify for these reservations to ensure proper identification and verification.
- b) **Support for Inclusivity:** The proposed amendment aligns with efforts to strengthen inclusivity and provide MSEs with equitable opportunities in public procurement.

2.4.3 Access to the 30% Procurement Allocation.

The bill should explicitly include registered MSEs among the groups entitled to benefit from the 30% procurement allocation by public entities. This provision would significantly enhance

market access for MSEs, driving their growth and contribution to the national economy..

3. Conclusion

The Micro and Small Enterprise Authority welcomes the opportunity to provide its input on the Business Laws (Amendment) Bill, 2024. While supporting initiatives that promote standardization, inclusivity, and economic growth, we recommend minimizing regulatory and financial burdens on MSEs to create a conducive environment for their development.

We remain committed to supporting legislative measures that enhance the MSE sector and align with the government's development agenda.

Simon Nyamolo.

For: Director General/CEO

Micro and Small Enterprises Authority



26th November 2024

Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O. Box 41842
NAIROBI 00100

Email: businesslaws@parliament.go.ke and
cna@parliament.go.ke

Dear Sir,

**FURTHER MEMORANDUM ON THE BUSINESS LAWS (AMENDMENT) BILL,
2024 (NATIONAL ASSEMBLY BILL NO. 49 OF 2024)**

Reference is my appearance before the Departmental Committee for Trade, Industry and Cooperative yesterday, 25th November 2024.

Based on the feedback from the Committee upon my appearance, I am pleased to provide a further Memorandum with submissions on the following pages regarding the proposal for amendment to Clauses 22 and 23.

Thank you again for the opportunity to comment on the above Bill and submit views.

Yours sincerely,

Martin Chesire

+++++

Specific Comments

#	Clause/Page of the Bill	Proposal	Justification
1.	<p>Clause 22 (Standards for Manufacturer)</p>	<p>Clause 22 of the proposed Bill is amended by deleting the proposed section 10D and repealing section 12 of the Standards Act therefor with the following new section 12—</p> <p>General Requirements for Products.</p> <p>12. (1) A product that is not safe shall not be placed on the market or put into service.</p> <p>(2) A product shall be presumed to be safe if the product, under normal conditions of use including duration and, where applicable, upon adherence to being put into service, installation and maintenance requirements, does not present any risk to public safety or health or endanger the environment.</p> <p>(3) Notwithstanding subsection (1), a product shall not be placed on the market or put into service if it is not sold freely or conforms to applicable regulatory requirements in the country of origin.</p> <p>(4) Only products that conform to requirements specified in the relevant standards and applicable regulations shall be placed on the market or put into service.</p> <p>(5) A person who places a product on the market shall—</p> <p>(a) undertake a risk assessment proportionate to the complexity of the product and provide information on the general description, its essential characteristics, and the possible risks identified that are relevant for assessing its conformity;</p> <p>(b) have internal processes or arrangements in place to assure conformity of its product and to continuously conformity with the relevant</p>	<p>As submitted yesterday (25th November 2024), I proposed to delete Clause 22 in its entirety since it violated the principle of "non-discrimination and national treatment" under Article 2.1 of the World Trade Organization (WTO) agreement on Technical Barriers to Trade (TBT), to which Kenya is a party since 1995. Given the feedback from the Committee, it is now proposed to repeal section 12 (Samples and information) with the new proposed amendments.</p> <p>First, the new proposal intends to cure the lack of clarity in the proposed Clause 22 by way of neutral text applicable to the object (the product) rather than the persons or identifying a specific party involved in placing a product on the market.</p> <p>Second, the new proposal combines and resolves the incoherence and duplicative requirements under Clause 22 and 23 by proposing requirements applicable to all product as expected by to safeguard public and consumers consistent with their constitution rights under Article 46 of the Constitution 2010. As such, the new section 12 is modified with the title "general requirements for products".</p> <p>Finally, the misplaced requirements for traceability described in the explainer as</p>

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#	Clause/Page of the Bill	Proposal	Justification
		<p>requirements for safety, health and the environment and any other requirements specified in any other law;</p> <p>(c) appropriately identify or have a system that references and makes the product traceable throughout the supply chain in adherence to any traceability requirements stipulated in the relevant standard, applicable regulation or law; and</p> <p>(d) make available an appropriate point of contact that is publicly accessible to consumers to submit complaints or provide information on any accidents or safety issues experienced with the product.</p> <p>(5) The traceability system shall be capable of identifying the product, its components, and the person who placed the product on the market by a means of visible and legible display on its packaging or accessing the relevant information on the product or the accompanying documents.</p> <p>(6) The Bureau shall specify the applicable product conformity assessment procedure or scheme in compliance with the provisions of this Act.</p> <p>(7) Where the Bureau has specified the conformity assessment procedure or scheme for a product, only products subjected to the required procedure or scheme shall be placed on the market or put into service.</p> <p>(8) The Bureau shall, if not of itself, delegate or designate a body to exercise and perform pre-market control or market surveillance conformity assessment in compliance with this Act.</p>	<p>the intent for Clause 23 have been clearly provided for, and a proposal to introduce a new section 12A on product information would be the new succeeding clause. The reasoning is that there were multiple contexts to which Clause 22 and 23 carried forward as such lacked clarity of their intention of the amendment.</p>

MCH/1/2024/NA

#	Clause/Page of the Bill	Proposal	Justification
		<p>(9) The Cabinet Secretary shall, on the recommendation by the Bureau, make regulations for products intended for display at trade fairs, exhibitions, demonstrations or other public events to exempt such products from the requirement of conformity assessment:</p> <p>Provided such products shall contain visible, identifiable, and understandable information stating that the product does not conform to the relevant requirements of applicable standards or regulations and is not intended to be placed on the market or put into service.</p> <p>(10) A person who places a product on the market that is not a safe product upon being subjected to the required conformity assessment procedure or scheme commits an offence under this Act.</p> <p>(11) A person commits an offence under this Act by knowingly placing on the market a product presenting a risk to an unreasonably unacceptable degree for its intended purpose or under the normal or reasonable conditions of use that adversely affect public and consumer safety, health or endanger the environment.</p> <p>(12) This section shall prevail over any product with a risk to public safety, health, deceptive practices and environmental protection, except where specific exemptions are provided under any other law on the associated risks.</p> <p>(13) In this section—</p> <p>"conformity assessment procedure" means the activities of, but not limited to, assessment, audit,</p>	

MCH/1/2024/NA

#	Clause/Page of the Bill	Proposal	Justification
		<p>calibration, certification, examination, inspection, testing, validation and verification to demonstrate that specified requirements relating to a product, process, service, system, installation, material, claim, person, body or organization are fulfilled whose output may be in the form of attestation through certificates, declarations, reports, statements, or marking;</p> <p>"conformity assessment scheme" means a set of rules, procedures and any specified requirements which direct how to undertake conformity assessment of a product, process, system, person or body against specified requirements in the relevant standard or applicable regulation;</p> <p>"place on the market" means the first and subsequent making available of a product on the market through any supply, distribution, consumption or use, whether in return for payment or free of charge;</p> <p>"risk assessment" means the dynamic process of identifying, analyzing and evaluating potential risks to public safety, health and the environment arising from products on the market and the probability of occurrence of harm or hazard;</p> <p>"safe product" means any product which, under normal or reasonably foreseeable conditions of use, including the actual duration of use, does not present any risk or only the minimum risks compatible with the product's use, considered acceptable and consistent with a high level of protection of the health, safety of consumers and preservation of the environment; and</p> <p>"supply chain actor" means any natural or legal person undertaking manufacturing, importation, offering manufacturing facilities, logistical support,</p>	

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#	Clause/Page of the Bill	Proposal	Justification
		<p>warehousing, packaging, distribution centres, distributors, wholesalers, and other entities addressing and dispatching to the end-user without having ownership of the products and any other courier services or freight transportation services;</p>	
2.	<p>Clause 23 (Samples and information)</p>	<p>Clause 23 of the proposed Bill is amended by deleting the proposed section 12 and inserting a new section 12A of the Standards Act therefor—</p> <p>Product information requirements.</p> <p>12A. (1) A product shall not be placed on the market or put into service without an appropriate indication of its country of origin on the product, its packaging or in a relevant accompanying document.</p> <p>(2) A product shall be accompanied by or programmed with clear safety, operating instructions and related information in an official language of Kenya, easily understood by consumers and the public.</p> <p>(3) A person who places a product on the market shall provide the consumers with sufficiently detailed product information to enable them to assess the inherent risks in a product throughout the typical or reasonable period of its use, where such risks are not immediately apparent without adequate safety or warnings notices to allow the consumers take precautions against those risks.</p> <p>(4) Notwithstanding subsection (3), the presence of safety or warning notices or any precautionary information on the product shall not exempt any person who places a product on the market from compliance with any other requirements stipulated under this Act.</p> <p>(5) The Bureau, a consumer, or any supply chain actor shall be granted upon request, free of charge,</p>	<p>As submitted yesterday (25th November 2024), I proposed to delete Clause 23 in its entirety because it did not address the issue of traceability stated in the intent. Again, similar to Clause 22, there was a lack of clarity, which contained duplicative requirements with Clause 22.</p> <p>Given the feedback from the Committee, I propose to introduce a new section 12A and consolidate all "product information requirements" in one section, which appeared to have been part of the intent of the original Clause 22 of the Bill.</p> <p>Therefore, the new proposal is provided in neutral text, not to any party concerned with the transaction aspects of the product. The new Clauses 22 and 23 have been framed to provide a comprehensive and holistic look with all coherent requirements necessary to enable the enforcement of these provisions.</p>

#	Clause/Page of the Bill	Proposal	Justification
		<p>access to any relevant information on a manufacturer's declaration of conformity of product to the relevant standards or applicable regulatory requirement on public safety, health, and preservation of the environmental or relevant information on product traceability.</p> <p>(6) A person who makes available a product on the market through an online sales platform or other means of virtual sales shall clearly and visibly indicate the required product information under subsection (1) to subsection (3).</p> <p>(7) A person commits an offence under this Act if that person knowingly withholds material information on risks associated with any product whose effects are not immediately apparent by placing such products on the market.</p>	
3.	<p>Clause 23 (Samples and information)</p>	<p>Under Clause 23 of the proposed Bill, the proposal below is for a new section 12B of the Standards Act, which replaces subsections 12(3) and 12(3) of the Bill.</p> <p>Duty to cooperate with the Bureau.</p> <p>12B. (1) Where a product placed on the market appears not to be a safe product, the person who placed the product on the market shall take appropriate and timely corrective measures to bring the product into conformity and ensure it no longer poses a risk.</p> <p>(2) Notwithstanding subsection (1), a person who placed a product on the market shall—</p> <p>(a) cooperate with the Bureau and other relevant regulatory agencies on actions required to eliminate or mitigate risks presented by a product it placed on the market;</p> <p>(b) inform the Bureau without delay in case of an accident or safety issue caused by a</p>	<p>My comments under Clause 23 apply to this new proposal for section 12B.</p>

#	Clause/Page of the Bill	Proposal	Justification
		<p>product it placed on the market, and where known the circumstances of the accident or safety issue; and</p> <p>(c) keep an appropriate record of complaints received on its products, reports on investigations, and any corrective measures, market monitoring, and other measures taken to bring the product into conformity.</p> <p>(3) Upon request by the Bureau or other relevant regulatory agencies, a person who places a product on the market shall provide—</p> <p>(a) details of the risk presented by the product, related complaints, known accidents or safety issues;</p> <p>(b) a description of any corrective measures taken to address the risk and any results on market monitoring;</p> <p>(c) details of information shared with its supply chain actors or consumers on the product concerned; and</p> <p>(d) progress reports on the status of any corrective measures.</p> <p>(4) Where a person who places a product that is not a safe product fails to undertake corrective measures, the Bureau may issue an order to that person to undertake any of the following, whichever is most appropriate for the risk—</p> <p>(a) prescribe specific conditions for the marketing of the product;</p> <p>(b) inform consumers of the risks in a clear and efficient manner;</p> <p>(c) marking of the product with appropriate warning on the risks presented;</p>	

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#	Clause/Page of the Bill	Proposal	Justification
		<ul style="list-style-type: none"> (d) removal of the product from listing in online sales platforms; (e) withdraw the product from the market; (f) recall the product from consumers or end-users; (g) destruction of the product; (h) stop the supply and distribution of the product, including notices of rejection at the points of entry; and (i) any other measures consistent with this Act to eliminate the risk to consumers and the public. 	



KENYA REVENUE AUTHORITY

PUBLIC

ISO 9001:2015 CERTIFIED

DOMESTIC TAXES DEPARTMENT REQUIREMENTS FOR LICENCING EXCISABLE GOODS MANUFACTURERS

Name of Applicant PIN No.....

1. Application to be done on itax (**Registration -Other registration - Excise License**)
2. Detailed Manufacturing process flow chart
3. Certificate of Incorporation/registration
4. Copies of PIN & Tax Compliance Certificate for;
 - a) Company
 - b) Director / owner
5. Details of Bankers and Name(s) of Bank, Branches, Account Numbers of
 - a) Company (**certified by bank**)
 - b) Director / owner (**certified by bank**)
6. Copy of other agencies valid permits:
 - a) KEBS Certificate of Compliance with Standards for all brands
 - b) Public Health (where applicable)
 - c) NEMA License (Plastics)
 - d) Business Permit (All)
7. Lease/ Tenancy agreement
8. Brand Details (**should include barcodes, package quantity, contact/location of factory**)
9. Evidence of signage i.e. Excise premise should be clearly labelled
10. Provide a detailed sketch / route map showing physical location of the factory
11. Proof of maintenance of proper records for accounting of: Raw materials, Finished Products, Wastages, Purchases, Sales and Deliveries
12. Valid Security bond for the protection of excise duty
13. Inspection Report of premises (by KRA)

REQUIREMENTS FOR ALCOHOLIC BEVERAGES/TOBACCO & TOBACCO PRODUCTS

- a Installation of Flow meters of a specification acceptable to KRA
- b Infrastructure to support installation of Excisable Goods Management System (Excise stamps application and Production Accounting) as shall be prescribed By KRA.
- c Copy of Valid NACADA Liquor license and distribution license from county
- d Clearance from MOH (**Tobacco and Tobacco products, signage and warnings**)

Taxpayer: I have submitted all of the above (-ticked) documents to KRA

Name:Signature

Phone Number..... Official Stamp/ Seal of the company.....

Tulipe Ushuru Tujitegeme!



25th November 2024

Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O. Box 41842
NAIROBI 00100

Email: businesslaws@parliament.go.ke

Dear Sir,

**MEMORANDUM ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 49 OF 2024)**

Reference is made to the invitation for submission of memoranda and notification public hearing dated 14th November 2024 on the above Bill.

Provided on the pages that follow are submissions concerning the proposed amendments to the Standards Act (Cap. 496) and the Kenya Accreditation Service Act (Cap. 496A). Also, attached is the signed and referenced public views template for the Business Laws (Amendment) Bill, 2024.

Thank you for the opportunity to comment on the above Bill and submit views.

Yours sincerely,

Martin Chesire

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Specific Comments

#	Clause/Page of the Bill	Proposal	Justification
1.	Clause 20 (Registration of Manufacturers)	Delete the proposed new <u>section 5A</u> in its entirety.	<p>Delete Clause 20 because it creates a new administrative process which is duplicative, negatively impacts the ease of doing business in Kenya, and is an additional burden-some requirement on the manufacturing sector. The justification provided in the explainer associated with this amendment is the lack of reliable data to support evidence-based policy interventions to promote the growth of the manufacturing sector. My reasoning is that–</p> <ol style="list-style-type: none"> 1. The responsibility for providing the Government with reliable data is assigned by statute (the Statistics Act, 2006) to the Kenya National Bureau of Statistics (KNBS) as the principal agency for collecting, analysing and disseminating statistical data in Kenya and the custodian of official statistical information. Therefore, if we stick to the rationale given in the explainer about this provision, then, there should exist reliable data, as such with the Kenya National Bureau of Statistics (KNBS) which would only require cooperation between KEBS and KNBS under the one Government approach; and 2. Under the Excise Duty Act, 2015, all manufacturers of excisable goods are required to be licenced by the Kenya Revenue Authority (KRA) after satisfying other attendant requirements including those of KEBS, National Environmental Authority (NEMA) and Public Health, where applicable. The application for such a licence is currently done and issued through the KRA iTax web portal. As such, it means there exists significant reliable data on all manufacturers of excisable goods within KRA (See <u>Annex 1</u> document on the KRA licence requirement). <p>Therefore, the provision should be deleted because it lacks merit both in intent and the problem can be addressed administratively under one Government approach.</p> <p>Finally, Clause 20 (section 5A) appears misplaced as an amendment given that the subject of section 5 of the Standards Act</p>

#	Clause/Page of the Bill	Proposal	Justification
			<p>(Standards Act, Cap. 496) which contains provisions concerning the "<u>Director and staff of the Bureau</u>" under Part II of the Standards Act on the establishment provisions of KEBS. As such, should the provision be retained, it will require it to be positioned at an appropriate part and related section of the Standards Act.</p>
2.	<p>Clause 21 (Disbursement power of Director)</p>	<p>Amend the proposed <u>section 10C</u> as follows:</p> <p><i>Section 10C (2) of the Standards Act is amended by deleting the word "Minister" and substituting therefor the word "Council".</i></p>	<p>Under subsection 10C (1) it is proposed to retain the existing provision because it is consistent with existing legislative drafting precedents that do not refer to an account but to a fund. The reference to an account implies a bank account operated by KEBS.</p> <p>Under subsection 10C(2), amend as proposed to remove the oversight by the Cabinet Secretary but rather to the Board of KEBS which is the "Council" which is consistent with existing governance principles under the <i>Mwongozo</i> code of governance.</p>
3.	<p>Clause 22 (Standards for Manufacturer)</p>	<p>Delete the proposed new <u>section 10D</u> in its entirety.</p>	<p>Delete the proposed Clause 22 because, first, it violates the principle of "non-discrimination and national treatment" under the World Trade Organization (WTO) agreement on Technical Barrier to Trade (TBT) to which Kenya is a party.</p> <p><u>Article 2.1</u> of the WTO-TBT Agreement states that</p> <p><i>"in respect of their technical regulations, products imported from the territory of any Member be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country".</i></p> <p>Given the foregoing, all the proposed provisions of section 10D cannot be retained without corresponding provisions for other persons concerned with placing similar products on the market such as the importers or distributors of products from foreign countries.</p> <p>If this section is retained as is, it means applying a disproportionately higher threshold on local products and the manufacturing sector will be subject to a greater burden of proof thereof. As such, it presupposes that local products are inferior</p>

#	Clause/Page of the Bill	Proposal	Justification
			<p>compared to imported products implying the present greater risks to the safety, health and the environment, but is it the case? Where is the evidence?</p> <p>Second, the provisions generally lack clarity, for example, the marginal note reads “standards for manufacturer” suggesting there is a different set of standards for importers, etc.</p> <p>Another example is the proposed section 10D (2)(a) requires only compliance with relevant Kenya Standards. There are other requirements contained in sector regulations governing other aspects of a product such as the environment (Article 42 of the Constitution).</p> <p>A minor drafting issue is that Clause 20 (section 10D) appears under Part III of the Standards Act, again given the subject, it should have been introduced within section 12 of the Standards Act.</p> <p>Finally, although there is an urgent need to legislate on product conformity aspects, however, it has to be introduced in a holistic view and adopt a rational approach similar to many progressive jurisdictions to allow the operationalization of the Constitutional provisions under Article 42 (Environment rights) and Article 46 (Consumer rights). Therefore, given the above, it would be unfair to subject only one set of players to higher requirements ignoring another set. The submission under this Clause also applies to the proposed Clause 23 below.</p>
4.	Clause 23 (Samples and information)	Delete the proposal to repeal <u>section 12</u> in its entirety	<p>Delete the proposed Clause 23 because it does not in any way address the issue of traceability stated in the intent to repeal this section. Again, similar to Clause 22, there is a lack of clarity and contains duplicative requirements.</p> <p>Some examples are:</p> <ul style="list-style-type: none"> • The marginal note refers to “samples and information” which does not reflect the proposed contents of the provision.

#	Clause/Page of the Bill	Proposal	Justification
5.	Clause 24 (Establishment of laboratories)	Delete the proposal to insert new sections <u>12A</u> , <u>12B</u> and <u>12C</u> in their entirety.	<p>The proposed subsection 12(1) (a) is duplicative of subsection 10D(2)(a) with the same requirement worded differently.</p> <ul style="list-style-type: none"> The proposed subsection 10D(2)(b) is already provided for in the Standards Act under subsection 10(1) (a) and 10(1) (b). The proposed subsections 10D(3) and subsection 10D(4) introduce the term "business operator" a very broad term that is not defined anywhere in the Standards Act. <p>Therefore, the proposed repeal of section 12 could benefit similarly from a comprehensive and holistic look at all uniform requirements concerning product conformity similar to my submission under Clause 22.</p> <p>The intent of this provision as given in the explainer to the Bill is to provide for the Bureau to establish laboratories, reference laboratories to keep pace with ever-growing technological and industrial development and provide for the designation of laboratories of competent bodies. First, the proposed amendment by new sections 12A and 12B are redundant and duplicative because the same is provided for under the functions of the Bureau in section 4 of the Standards Act, that is,</p> <p>4. Functions of the Bureau</p> <p>(1) <i>The functions of the Bureau shall be—</i></p> <p>(a) ...</p> <p>(b) <i>to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;</i></p> <p>(c) <i>to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may</i></p>

#	Clause/Page of the Bill	Proposal	Justification
			<p><i>be manufactured, produced, processed or treated;</i></p> <p>Given the above, subsection 4 (1)(b) grants and empowers the Bureau to establish measurement services and subsection 4 (1)(c) similarly on testing services, and thus the two existing provisions sufficiently address the intent.</p> <p>Second, there is no reason to introduce this amendment under section 12, and if at all it was necessary, the logical positioning would have been to amend the functions under section 4 of the Standards Act to provide clarity on both testing and measurement services using modern-day terminologies such as the use of the terms “products or goods” in place of “commodities”.</p> <p>Third, the proposed amendment for a new subsection 12A(2) to subsection 12A(6) addresses the designation of laboratories. Of great concern are the proposals under subsection 12A(2) and subsection 12A(3) which create an overlap with the present function of the Kenya Accreditation Service (KENAS), by introducing a new layer of assessment.</p> <p>Good practice requires that the basis or foundation for designation is obtaining accreditation to the respective international standards and for a defined scope of accreditation for which competence has been demonstrated. Although subsection 12A(2) recognizes accreditation, subsection 12A(3) negates the same. In practice, any other regulatory requirements to be met before appointment as a designation can be incorporated into the existing accreditation criteria but they are mostly handled administratively under an instrument of designation which is usually an agreement or contract. As such the provisions under subsections 12A(4), 12A(5) and 12A(6) do not require to be legislated.</p> <p>Fourth, the practice of designation or appointing designated bodies is not restricted to laboratories but covers other activities for the assessment of conformity of products which include inspection, verification and certification. In addition, the concept of designation</p>

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#	Clause/Page of the Bill	Proposal	Justification
			<p>is also applicable to national measurement laboratories.</p> <p>Given the foregoing, the proposed amendments by insertion of subsection 12A(1), 12A(3),12A(4), 12A(5) and 12A(6) should be deleted. Only the provision of 12A(2) could be amended appropriately to provide designation accompanied by the proper definition of terms to avoid misapplication.</p> <p>Fifth, the proposed amendment for insertion of subsection 12B (1) is restrictive of private sector participation in the provision of calibration services. A review of the KENAS website returned that it has accredited over fifty (50) calibration laboratories that provide service to diverse sectors.</p> <p>Retaining this provision will be retrogressive given the investment already made by the private sector and the fact that KEBS cannot fully service the demand for calibration services. In the second part of the proposed subsection 12B (1), there is a clear misapplication of the concept of designation.</p>
6.	Clause 25 (Appointment of inspection body)	Delete the proposal to insert a new <u>section 14D</u> in its entirety.	Delete the proposed new section 14D because it is not clear what is the problem to be cured. Currently, KEBS is capable of appointing inspection bodies in foreign countries under the Verification of Conformity to Standards Order (Legal Notice).
7.	Clause 26 (Accreditation of foreign conformity assessment bodies operating in Kenya)	<p>Amend the proposed new <u>section 10A</u> as follows:</p> <p><i>(1) A conformity assessment body established in Kenya seeking to be accredited by a foreign accreditation body shall obtain an exemption from the Service in a prescribed manner and pay such fees before first making such an application.</i></p> <p><i>(2) An accredited body by a foreign accreditation body shall, within three</i></p>	<p>The problem identified has been inverted. It is the local conformity assessment bodies established in Kenya and government-related entities that continue to seek accreditation outside Kenya from South Africa (SANAS), United Kingdom (UKAS), Germany (DaKKs), and the Netherlands (RvA), yet KENAS is capable to address their accreditation needs.</p> <p>For example, let's use the audited report of an agency of government. In the financial year (FY) 2021/2022 it spent KES 67,494,813 and FY 2022/23 (spent KES 92,338,215) under its accreditation services. However, the same agency paid KENAS for accreditation services in FY 2021/2022, KES 10.6 million and about</p>

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#	Clause/Page of the Bill	Proposal	Justification
		<p><i>months of the commencement of this Act apply to the Service for exemption.</i></p> <p><i>(3) An accredited body by a foreign accreditation body that fails to comply with subsection (2) shall be deemed not to hold a valid accreditation under this Act or any other law.</i></p>	<p>KES 7 million in FY 2022/2023.</p> <p>Therefore, if all local conformity assessment bodies use KENAS, it would allow them to be on a pathway to financial stability.</p>
8.	Clause 27 (Accreditation Levy)	Delete the proposal to insert a new <u>section 12A</u> in its entirety.	<p>Delete the proposal to introduce a new levy for accreditation because it is counterproductive to KENAS and punitive to those seeking to enhance their operating system. First, it will be evaluated as an impairment and comprise of their impartiality by being driven by financial commercial and financial pressures (ISO/IEC 17011 standard), and they could lose their international recognition.</p> <p>Second, most locally accredited bodies and those of countries in which KENAS currently services will seek alternative accreditation bodies, meaning that KENAS will retain few accreditations.</p> <p>Third, the business model for accreditation bodies in all jurisdictions does not include an exclusive levy such as the proposed. However, most accreditation bodies obtain a portion of their funds from government grants generally under a principle upholding financial independence by not allowing government grants to be the dominant source of income and vice-versa on fees they charge. Therefore, it is proposed that KENAS continue to be supported through grants by the government.</p>



**DOMESTIC TAXES DEPARTMENT
REQUIREMENTS FOR LICENCING
EXCISABLE GOODS MANUFACTURERS**

Name of Applicant PIN No.....

1. Application to be done on itax (**Registration -Other registration - Excise License**)
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6. Copy of other agencies valid permits:
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 - c) NEMA License (Plastics)
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REQUIREMENTS FOR ALCOHOLIC BEVERAGES/TOBACCO & TOBACCO PRODUCTS

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- c Copy of Valid NACADA Liquor license and distribution license from county
- d Clearance from MOH (Tobacco and Tobacco products, signage and warnings)

Taxpayer: I have submitted all of the above (-ticked) documents to KRA

Name:Signature

Phone Number..... Official Stamp/ Seal of the company.....



[NOVEMBER, 2024]



**THIRTEENTH PARLIAMENT – (THIRD SESSION)
THE NATIONAL ASSEMBLY**

IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024

(Pursuant to Articles 1(2), 10(2)(a) And 118 of the Constitution)

Section A — Object of the Bill

The **Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the **National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 503); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).**

Section B—Personal Information

- 1. Name: **Martin CHESIRE**
- 2. Gender: **Male**
- 3. Constituency: **Moiben**
- 4. County: **Uasin Gichu**
- 5. Identification No. (National ID/Passport/Kenyan Driving Licence): **11650832**

Section C—Views on Bill

6. What are your views on the Bill? (Fill Table as appropriate)

S/No.	Clause/Page of the Bill	Proposal	Justification
1.	20 to 27	See enclosed	
2.			
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SIGNED  DATE: 25th November, 2024

Instructions:

*Fill this Template.

*You may fill more than one form on a Bill.

*Filled should forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, 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.**

Appreciation: The National Assembly appreciates your participation in this process.

"For the Welfare of Society and the just Government of the People"



TO: THE CLERK, NATIONAL ASSEMBLY
FROM: TATU CITY LIMITED ("TCL")

MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE BUSINESS LAWS (AMENDMENT) BILL 2024

A. INTRODUCTION

1. Tatu City Limited ("TCL") was licensed by the Special Economic Zones Authority ("SEZA") to operate as a Developer, Operator and Enterprise in a Special Economic Zone ("SEZ") through Gazette Notice No. 4892 of 22 May 2017.
2. On 21 November 2024, the Clerk of the National Assembly sent us a letter calling for our proposals on policy measures in relation to Business Laws (Amendment) Bill, 2024 for consideration by the Departmental Committee on Trade, Industry and Cooperatives.
3. This Memorandum seeks to propose amendments to the policy and regulatory framework for SEZs.

B. PROPOSALS RELATED TO THE SPECIAL ECONOMIC ZONES ACT, 2015

4. Clause 30 of the bill proposes amendment of Section 4(2) of the Special Economic Zones Act, 2015 to enable the Cabinet Secretary to set the minimum acreage and minimum investment to be declared a special economic zone.
5. We propose further enrichment of the proposal in Clause 30, at Section 4 (6) to include the following new paragraph:

(k) such other sectors as shall be prescribed by the Cabinet Secretary on the recommendation of the Authority.

6. The proposed amendment to Section 4 subsection (6) will provide flexibility to the Government to incorporate additional/ emerging sectors as the case may be from time to time without need to amend the law every time.
7. The bill proposes amendment of Section 8 by inserting the following new paragraph immediately after paragraph (4) —

"(5) Goods of any description sold to any person that remain within a customs-controlled areas of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.

8. This proviso aims to clarify that goods traded within the customs-controlled areas of a special economic zone will be treated as duty-free. This approach is intended to stimulate business activities within the zones, fostering a circular economy and encouraging complementarity. For example, it allows one

factory's products or byproducts to be seamlessly utilized as raw materials by another company, thereby creating additional value.

9. We propose that clause 36, which proposes to amend Section 35 of the Special Economic Zones Act, 2015 by inserting a new sub section 5 be **deleted**.
10. The spirit of the amendment of section 35, was to confer 10 years licence to Special Economic Zone Developer, Operator or enterprise and it has no relation to incentives and tax benefits which are conferred under other tax laws. It is proposed that such an amendment be effected on the proposed amendment to Section 27 subsection (5) paragraph (d) as per (13) below.
11. We propose a new amendment to Section 6 of the Special Economic Zones Act, 2015, to amend paragraph (b) by deleting the word "Kenya" and substituting therefor the words "the customs territory".
12. This amendment to Section 6 of the Bill is intended to align our market access rules with the EAC framework, including the Treaty establishing the EAC, its protocols, and the recently approved EAC SEZ Policy and Regulations. The amendment also aims to enhance Kenya's competitiveness and standardize SEZ practices across the region while expanding the catchment area for duty-free and tax-free sourcing of raw materials, facilitating value addition within our zones.
13. We propose amendment of Section 27 of the Special Economic Zones Act by:
 - i. deleting the words "the Commissioner of Customs" and substituting therefor the words, "operator" in subsection (2);
 - ii. inserting the words, "and inform the Commissioner of Customs" at the end of the paragraph after the words "renew the licence" in subsection (2);
 - iii. In subsection (5) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) be valid for 10 years subject to inspection by the Authority and payment of annual licence fees.
14. The amendment to Section 27 subsection (2) is meant to ease the bureaucratic licensing process that industry stakeholders have experienced over time by mandating the responsibility to give approvals on the Special Economic Zones Authority based on a recommendation from the Operators.
15. The amendment to subsection (5) seeks to grant a **10-year SEZ license** to Special Economic Zone Developers, Operators, and Enterprises upon approval by the Authority. This provision aims to provide clarity and long-term certainty to investors regarding the duration of the license, thereby enhancing the predictability of the SEZ framework.

A 10-year licensing period aligns with international best practices in SEZ management, offering a stable operational timeline that encourages substantial investments, strategic planning, and long-term commitments. Additionally, this amendment ensures that investors can focus on scaling operations and achieving economic objectives without frequent renewals or administrative interruptions.

16. We propose amendment of The First Schedule to the Special Economic Zones Act, 2015 by inserting the following new paragraph immediately after paragraph (h) —

(i) any other zones that be gazetted by the Cabinet Secretary from time to time on the recommendation of the Authority.

17. The amendment to the First Schedule is meant to add a new paragraph (i) to provide flexibility to incorporate additional emerging zones as the case may be from time to time without need to amend the law and complements our proposal (5) above.

C. PROPOSED INCENTIVES FOR SPECIAL ECONOMIC ZONES

18. The Special Economic Zones Act, 2015 has been in existence since 2015. However, the expected investment growth from SEZs has not been encouraging due to stiff competition from regional counterparts that provide more attractive incentives and friendlier business-operating environments. To promote the country as a preferred investment destination, Kenya can catalyze investments through the SEZs by extending various fiscal incentives.

19. The following incentives are proposed:

a) Additional incentives related to Value Added Tax Act, 2013:

- (i) Exemption from VAT of taxable goods supplied by an SEZ enterprise within a special economic zone;
- (ii) Exemption for taxable services supplied by an SEZ enterprise within a special economic zone;
- (iii) Zero-rating for the supply of goods or taxable services to a special economic zone developer, operator or enterprise;

b) Additional incentives related to Income Tax Act:

- (i) Capital Investment deduction allowance at rate of 150% for special economic zones developers, operators and enterprises outside Nairobi and Mombasa counties;
- (ii) Exemption from Corporation tax for 10 years and 15% for another 10 years;

c) Additional incentives related to Excise Duty Act, 2015:

- (i) Exemption from Excise duty on excisable goods and services imported by an SEZ developer, operator or enterprise.

d) Additional incentives related to Miscellaneous Fees and Levies Act, 2016:

- (i) Exemption from Railway development levy for goods destined to special economic zones;

D. JUSTIFICATION FOR INCENTIVES FOR SPECIAL ECONOMIC ZONES

20. Currently, SEZ entities are subject to a 10% Corporate Tax. However, due to the large capital expenditures invested in SEZs, very few entities can be profitable and capable of paying any Corporate Tax within the first 10-years of their operation.

E. CONCLUSION

We appreciate your attention to the proposed amendments and incentives to be included in the Business Laws (Amendment) Bill 2024, which we believe will greatly contribute to the growth and development of Special Economic Zones in Kenya. Thank you for your consideration, and we look forward to a favorable response.

Yours Sincerely,

For and on behalf of: **Tatu City Limited**

A handwritten signature in cursive script, appearing to read "Preston Mendenhall".

Preston Mendenhall
Country Head, Kenya



[NOVEMBER, 2024]

**THIRTEENTH PARLIAMENT – (THIRD SESSION) THE NATIONAL ASSEMBLY
IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024**

(Pursuant to Articles 1(2), 10(2)(a) And 118 of the Constitution)

Section A — Object of the Bill

The **Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the **National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 503); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).**

Section B—Personal Information

1. Name: ZAKI SHEIKH, PARTNER
2. Gender: MALE PRIVATE LIMITED COMPANY: ASHFORD PARTNERS LLP, THE ADDRESS BUILDING, MUTHANGARI DRIVE
3. Constituency: WESTLANDS
4. County: NAIROBI
5. Identification No. (National ID/Passport/Kenyan Driving Licence): 24909605

Section C—Views on Bill

6. What are your views on the Bill? (Fill Table as appropriate)

S/No.	Clause/Page of the Bill	Proposal	Justification
I.	Clause 30	<p>Section 4 of the Special Economic Zones Act is amended as follows —</p> <p>in subsection (6) inserting the following new paragraph immediately after paragraph (j) —</p> <p>(k) such other sectors as shall be prescribed by the Cabinet Secretary on the recommendation of the Authority.</p>	<p>The amendment to Section 4 subsection (6) is proposed to provide flexibility to the Government to incorporate additional/ emerging sectors as the case may be from time to time without need to amend the law every time.</p>

2.	New Clause	<p>Section 6 of the Special Economic Zones Act, 2015, is amended in paragraph (b) by —</p> <p>(a) deleting the word “Kenya” and substituting therefor the words “the customs territory”;</p> <p>(b) inserting the following proviso –</p> <p>Provided that –</p> <p>(i) goods whose content originates from the customs territory shall be exempt from payment of import duties;</p> <p>(ii) goods whose contents partially originates from the customs territory shall pay import duties on the non-originating components subject to the customs procedures.</p>	<ul style="list-style-type: none"> • This amendment to Section 6 of the Bill is intended to align our market access rules with the EAC framework, including the Treaty establishing the EAC, its protocols, and the recently approved EAC SEZ Policy and Regulations by the Sectoral Council on Trade, Industry, Finance, and Investment (SCTIFI). The amendment aims to enhance Kenya's competitiveness and standardize SEZ practices across the region. • This provision also expands the catchment area for duty-free and tax-free sourcing of raw materials, facilitating value addition within our zones.
3.	Clause 31	<p>The Special Economic Zones Act is amended in Section 8 by inserting the following new paragraph immediately after paragraph (4) —</p> <p>“(5) Goods of any description sold to any person that remain within a customs-controlled areas of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.</p> <p>Provided that –</p> <p>“For the sale of special economic zone housing, a one-off surcharge of 2.5% on the value shall be payable by the Developer, Operator and Enterprise on the first sale of a special economic zone housing.</p>	<ul style="list-style-type: none"> • Amendment to the existing Section 8 of the Bill to include the proviso which aims to clarify that goods traded within the customs-controlled areas of a special economic zone will be treated as duty-free. This approach is intended to stimulate business activities within the zones, fostering a circular economy and encouraging complementarity. It allows one factory's products or byproducts to be seamlessly utilized as raw materials by another company, thereby creating additional value. • This amendment is designed to align Kenya's SEZ framework with global best practices, facilitating the full implementation of the "Live, Work, and Play" model. This model integrates residential, commercial, and recreational spaces within SEZs, thereby enhancing the quality of life for employees and residents.

			<ul style="list-style-type: none"> • The provision introduces a fee on the value of SEZ housing developments, ensuring equitable treatment and avoiding bias against non-SEZ housing projects. By fostering affordable housing solutions, this amendment aims to support workforce well-being and attract high-value investments, a strategy successfully implemented in established SEZs globally, such as those in Singapore, China, and the UAE.
<p>4.</p>	<p>Proposed New Clause</p>	<p>Section 27 of the Special Economic Zones Act is amended –</p> <p>(a) in subsection (2) by:</p> <p>(i) deleting the words “the Commissioner of Customs” and substituting therefor the words, “operator”; and</p> <p>(ii) by inserting the words, “and inform the Commissioner of Customs” at the end of the paragraph after the words “renew the licence”.</p> <p>(b) In subsection (5) by deleting paragraph (d) and substituting therefor the following new paragraph —</p> <p>(d) be valid for 10 years subject to inspection by the Authority and payment of annual licence fees.</p>	<ul style="list-style-type: none"> • The amendment to Section 27 subsection (2) is meant to ease the bureaucratic licensing process that industry stakeholders have experienced over time by mandating the responsibility to give approvals on the Authority based on a recommendation from the Operators. • The amendment to subsection (5) seeks to grant a 10-year SEZ license to Special Economic Zone Developers, Operators, and Enterprises upon approval by the Authority. This provision aims to provide clarity and long-term certainty to investors regarding the duration of the license, thereby enhancing the predictability of the SEZ framework. • A 10-year licensing period aligns with international best practices in SEZ management, offering a stable operational timeline that encourages substantial investments, strategic planning, and long-term commitments. Additionally, this amendment ensures that investors can focus on scaling operations and achieving economic objectives

			without frequent renewals or administrative interruptions.
5.	Clause 36	Delete clause 36 of the Bill which proposes to amend Section 35 of the Special Economic Zones Act by inserting a new sub section 5.	<ul style="list-style-type: none"> • Provision to be deleted - The spirit of the amendment was to confer 10 years licence to Special Economic Zone Developer, Operator or enterprise and it has no relation to incentives and tax benefits which are conferred under other tax laws. • It is proposed that such an amendment to capture the spirit be effected on the proposed amendment to Section 27 subsection (5) paragraph (d) as proposed in our document above.
6.	Proposed new Clause	<p>The First Schedule to the Special Economic Zones Act is amended by inserting the following new paragraph immediately after paragraph (h) —</p> <p>(i) any other zones that be gazetted by the Cabinet Secretary from time to time on the recommendation of the Authority.</p>	The amendment to the First Schedule is meant to add a new paragraph (i) to provide flexibility to incorporate additional emerging zones as the case may be from time to time without need to amend the law.

SIGNED



DATE: 20th November, 2024

Instructions:

*Fill this Template.

*You may fill more than one form on a Bill.

*Filled should forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, 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.**

Appreciation: The National Assembly appreciates your participation in this process.

"For the Welfare of Society and the just Government of the People"

THIRTEENTH PARLIAMENT – (THIRD SESSION)
IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024

Section A — Object of the Bill

The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024) is a Bill sponsored by the Leader of the Majority Party which seeks to amend the National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 503); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).

Section B—Personal Information

Name:	Wamaitha Githinji
Gender:	
Constituency:	Langata
County:	Nairobi
Identification No. (National ID/Passport/Kenyan Driving Licence):	

Section C—Views on Bill

S/No.	Clause	Proposal	Justification
1.	27	- Delete clause and don't charge introduce a new levy	<ul style="list-style-type: none"> - This further increases the cost of doing business in Kenya leading to making Kenya an EVEN MORE unattractive place to do business. Organisations are leaving, more people are becoming unemployed and Kenyans becoming poorer. - Parliament should enact laws with measures to reduce unemployment, increase opportunities for organisations to do business in Kenya instead of enacting laws that are leading to organisations leaving and making Kenyans unemployed and poor.
2.	28	- Don't establish a scrap metal council	<ul style="list-style-type: none"> - Clause is taking away the role of the organisations such as Kenya Bureau of Standards. Instead of establishing a Council improve service provision at organisations such as Kenya Bureau of Standards. - The council adds more bureaucracy to doing business in Kenya making it a more unattractive to do business. - The establishment of this council will result in more costs to us as taxpayers when it is very clear that there is a bloated and unsustainable public service wage bill.



(1000) 8
27/11/24

KENYA TRADE NETWORK AGENCY (KENTRADE)

A Global Leader in Trade Facilitation

REF: KTNA/LEG/10/1Vol.2 (131)

November 25, 2024

Clerk of the National Assembly
The Office of the Clerk of National Assembly
P.O Box 41842 - 00100
NAIROBI

cc Mr. Abenayo Wasike, HoD

To bring to the attention of
the Dept. Comm. on Trade for
consideration. JM 28/11/24

Attn: Mr. Peter K. Chemweno

RE: MEMORANDUM ON THE PROPOSED AMENDMENT OF SECTION 11 OF
THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM ACT (CAP 485
D)

Reference is made to the above subject matter.

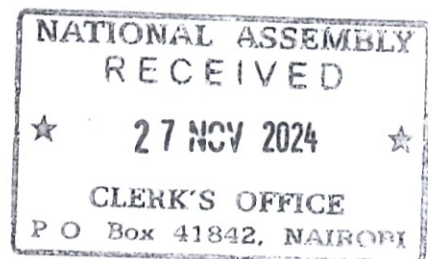
Kenya Trade Network Agency (KenTrade) is a State Corporation under the National Treasury established by the National Electronic Single Window Systems (NESWS) Act (Cap 485D). We submit this memorandum as a stakeholder playing a key role in implementation of the provisions of the subject legislation.

Our memorandum is in response to the proposed amendment of Section 11 of the National Electronic Single Window System Act (Cap 485D), granting the Cabinet Secretary the power to exempt certain categories of users from payment of fees prescribed under the Act.

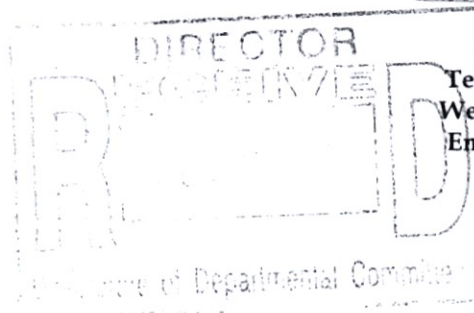
We have attached herein a matrix presentation that captures our proposal on relevant provision proposed for amendment for your review and consideration. We would be glad to provide further input and perspectives, as and when required.

Yours Sincerely,

David Ngarama
CHIEF EXECUTIVE OFFICER



Embankment Plaza
P.O Box 36943 - 00200
Upper Hill, Nairobi - Kenya



Tel: +254 20 2795213
Website: www.kentrade.go.ke
Email: info@kentrade.go.ke

Memorandum Matrix on Proposed Amendment of Section 11 of the National Electronic Single Window System Act (Cap 485 D)

Section of The Act	Proposed amendment Provision	Issue	Proposal/ Recommendation	Justification
Section 11	The Cabinet Secretary may, by notice in the gazette, exempt certain category of users from payment of fees prescribed under this Act	<p>The provision does not give a requirement for the power to be exercised in accordance with conditions to be prescribed in Regulations</p> <p>The provision does not capture the power to provide for the reduced rates given to certain category of users.</p>	The Cabinet Secretary may, by notice in the Kenya gazette exempt certain category of users from payment of fees prescribed, provide for reduced rates of fees prescribed for certain categories of users and provide for increased rates of fees prescribed subject to conditions prescribed under the regulations.	<p>There is need for development of conditions to prescribe the manner in which the cabinet secretary may exercise the power and the categories of users who may be covered.</p> <p>There is also need to provide for reduced fees for certain category of users such as the fresh produce exporters for purposes of increasing the export markets</p> <p>This is aligned to the government objective of increasing the export markets.</p>



Social Health Authority House
1st Floor Wing B
P.O. Box 30418 - 00100 NAIROBI- KENYA
Tel: +254 0113108305
Email: info@scrapmetalcouncil.go.ke
Website: www.scrapmetalcouncil.go.ke

SMC/2024/11/27

27th November, 2024

The Clerk of the National Assembly
Parliament of Kenya
P.O. Box 41842-00200
NAIROBI

Dear Sir,

RE: BUSINESS LAWS (AMENDMENT) BILL 2024, PROPOSED AMENDMENTS TO SECTIONS 4(1) AND FURTHER PROPOSAL TO AMEND 7(2) OF THE SCRAP METAL ACT, 2015

The Scrap Metal Council is established under **Section 3(1) of the Scrap Metal Act, 2015** and it is mandated to regulate the scrap metal industry and to ensure economic growth, environmental stewardship, and public safety.

However, legislative and operational gaps hinder the Council's ability to fulfill its mandate effectively. This memorandum highlights the need to amend Sections 4(1) and 7(2) of the Act to address these challenges and align the Council's operations with governance best practices.

Key Issues

- 1. Non-Compliance with the State Corporations Act (Section 6(1)); -**
Section 4 (1) of the Scrap Metal Act, 2015 fails to comply with the State Corporations Act which is the parent Act guiding all States Corporations in Kenya.
Section 6(1) of the States Corporations Act outlines the composition and governance structure of state bodies. The Council's current composition does not ensure effective oversight, representation, and accountability.
Amendments to Section 4 (1) as proposed is highly welcomed as it will cure the existing gap and align with the State Corporations Act.
- 2. Inadequate Staffing Powers Under Section 7(2):**
Section 7(2) of the Scrap Metal Act, 2015 *states that the Ministry responsible for matters industrialization shall provide*

secretariat services to the Council". This provision undermines the Council's autonomy and contradicts its status as a body corporate under **Section 3(1)**. The Council lacks the authority to hire staff, including enforcement officers and inspectors, limiting its ability to execute its functions as outlined under Section 6 of the Act.

3. **Challenges in Achieving the Council's Mandate (Section 6):** The Council is tasked with critical functions such as; -
- a) **Advising the Cabinet Secretary on regulatory measures and environmental stewardship.**
 - b) **Vetting and processing license applications. • Receiving and resolving complaints and disputes within the industry.**
 - c) **Collaborating with inspectors to enforce order in the scrap metal trade.**

Without staffing autonomy, these functions cannot be effectively executed. This leaves the Scrap Metal industry and government vulnerable to illegal activities, vandalism, and environmental harm.

Proposed Amendments

Amend Section 4(1) – Compliance with the State Corporations Act:

- a) Align the composition of the Council with the requirements of Section 6 (1) of the State Corporations Act.
- b) Ensure adequate representation of industry stakeholders, government agencies, and public interest groups to enhance accountability and governance.

Amend Section 7(2) – Grant Staffing Autonomy to the Council:

- c) Revise Section 7(2) to empower the Council to hire its own staff. The amended provision should read: ***"The Council shall employ such staff as may be necessary for the performance of its functions under this Act."***
- d) This change will ensure the Council can recruit enforcement officers, administrative personnel, and inspectors critical for achieving its mandate.

Rationale for the Amendments. These amendments will provide the council with the authority to independently enforce licensing regulations, monitor industry compliance, and address public complaints effectively protecting the public against vandalism. Further, the amendments would enhance Governance and Accountability within the Scrap Metal Council.

- a) Aligning the Council's composition with the State Corporations Act will ensure transparency, inclusivity, and effective oversight of its operations.

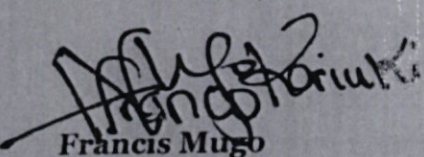
Operational Autonomy and Efficiency:

- a) Granting the Council staffing autonomy will eliminate reliance on the Ministry for secretariat services, enhancing its independence and efficiency.
- b) This autonomy is essential for fulfilling the Council's mandate under Section 6.
- c) Strengthening the Scrap Metal Industry.
- d) The proposed amendments will address critical challenges such as vandalism, theft of infrastructure, and environmental degradation.
- e) A well-functioning Council will promote investor confidence, economic growth, and environmental sustainability.

Conclusion and Recommendations

The Scrap Metal Council's inability to hire staff and enforce its mandate severely hampers its effectiveness. Amending Sections 4(1) and 7(2) of the Scrap Metal Act, 2015, is essential to address these gaps and ensure the Council operates as an autonomous, efficient, and accountable regulator. We urge Parliament to: 1. Amend Section 4(1) to comply with the State Corporations Act, Section 6(1). 2. Revise Section 7(2) to grant the Council staffing autonomy necessary to perform its functions. These amendments will enable the Council to regulate the scrap metal industry effectively, safeguard public interests, and contribute to Kenya's economic and environmental goals.

Yours faithfully


Francis Mugo
CHAIRPERSON

COMMENTS ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024.

(A). SECTION 14D(1) & 14D(2)

The sections read as follows:

“The Bureau may appoint an inspection body in the country of origin of goods to undertake verification of conformity to Kenya Standards or approved specifications”, 14D(1).

“The inspection body shall have tax residence in Kenya”, 14D(2).

Comments:

1. Does clause 14D(1) above includes “Services” also or the clause is strictly restricted to “Goods” only?
2. Clause 14D(2) which says the appointed inspection body by KEBS must be tax resident in Kenya is unimplementable and shall frustrate KEBS from getting inspection services.
3. A tax resident in Kenya is a company that has been present in Kenya for 183 days or more in the year of income, or present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.
4. This means by the time KEBS is appointing the inspection body say in China, that company must have had a presence in Kenya for the last two and half years.
5. Already non-resident companies are subject to Kenya corporate income tax (CIT) on the trading profits attributable to a Kenyan public entity so the country is not losing anything with regard to contracts offered by Kenyan public entities for activities done outside Kenya.
6. The problem of forcing the outside companies to be resident in Kenya is that resident companies are taxable in Kenya on income accrued or derived from Kenya; and, resident companies with

business activities outside Kenya are also taxed on income derived from business activities outside of Kenya – which will be a double taxation of those companies because they are already taxed for being non-resident as long as they are contracted by a public entity.

7. The rate of CIT for resident companies, including subsidiary companies of foreign parent companies, is 30%; and, the CIT rate for branches of foreign companies and PEs is 30% which is too high and so it will not be possible for a company to open a branch in Kenya and it has no prospects of getting business.
8. The Finance Act, 2023 introduced an income tax on the repatriated income for branches of foreign companies and PEs at a rate of 15%; and, accordingly, the effective tax rate for PEs and branches will now be 40.5%, which is the same as that of an incorporated Kenyan company with non-resident shareholders – so the government is already covered and so there is no need for clause 14D(2).
9. What happens if KEBS does not find such a company in China? That means goods from China shall not be inspected – KEBS is creating trouble and complications for itself with this clause because satisfying point No. 3 above will be a tall order.
10. A company from China can only open a branch in Kenya if the company is assured of business in Kenya otherwise it cannot incur costs of operating an office in Kenya and is not assured of any business.
11. What exactly does KEBS want to achieve with clause 14D(2)?
12. At what point shall this clause 14D(2) be examined and assessed? Shall it be at the stage of tendering or at what point shall the requirement be assessed because that will bring challenges even if it were to be approved?
13. This clause is not adding any value because if the idea was to get tax money for activities of public entities that are performed outside Kenya, the Kenyan tax laws as given above already covers that – the clause is just a repetition of already existing scenarios.

(B). SECTION 12A(1)

The sections read as follows:

“There is imposed a levy to be known as the accreditation levy which shall be at the rate of three percent of the value of any accredited service offered to a third party by an accredited conformity assessment body”, 12A(1).

Comments:

1. Kenyans are already heavily burdened by high cost of living and numerous taxes and other charges so it must be justified beyond reasonable doubts why this other levy on accreditation services is necessary because ultimately all taxes and levies are transferred and borne by the citizen.
2. Will Kenyans die if this levy on the accreditation services, whatever those accreditation services are, is not levied?
3. Will the government operations fail if this levy on the so-called accreditation services is not levied?
4. How crucial are those accreditation services now than before to warrant that levy?
5. Which are those accreditation services which when a levy is not levied on them Kenyan public shall be exposed to existential danger? Which are those accreditation services?
6. How were those accreditation services being offered previously without a levy? Can't they continue to be offered that way?
7. If the purpose of the levy is to finance the KENAS (the Service), how critical is KENAS to the country without which the citizens will be exposed to real danger?
8. How critical is KENAS now that accreditation is a global standardized movement through frameworks such as ISO? Why doesn't the country just adopt the global standards?

9. Can't those KENAS services be offered by an existing government agency without the need for new arrangements that shall burden citizens with another levy?
10. Can't KENAS find other channels of raising funds for its operations through its other mandates and activities as established?
11. Will the levy be levied on accreditation services offered domestically within Kenya or even accreditation services offered outside Kenya?
12. If the levy shall be levied to accreditation services offered outside Kenya, how shall it be administered in view of tax laws of the foreign country and the cost repercussions to the company offering the services? – this is likely to create conflicts of double taxation tendencies including rejection by foreign companies to offer services.



Kenya Bureau of Standards
Standards for quality life

RESTRICTED

REF: KEBS/LEG/1

DATE: 25th November, 2024

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KEBS Coast Region
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Tel: +254 (0) 41 2317030/1,
223000938/0
E-mail: kebs-coast@kebs.org

Dear *Clerk,*

RE: MEMORANDUM ON BUSINESS LAWS (AMENDMENT) BILL 2024

We refer to the above matter and your letter dated 21st November 2024. We hereby forward our written memorandum on the Bill for your kind consideration.

KEBS Lake Region
P. O. Box 2040, Kisumu 40100
Tel: +254 (0) 57 202 903/0, 202 9540
E-mail: kebs-kisumu@kebs.org

Yours *faithfully,*

KEBS South Rift Region
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Esther Ngari
MANAGING DIRECTOR

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Cc: **Hon. Salim Mvurya EGH**
The Cabinet Secretary
Ministry of Investments, Trade and Industry
Social Security House
P.O. Box 30418-00100
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ISO 9001:2015
HAFS-ISO 22301
ABNS-ISO 19011



Kenya Bureau of
Standards
Standards for quality life

MEMORANDUM ON THE BUSINESS LAW AMENDMENT BILL 2024



Kenya Bureau of
Standards

Standards for quality life

1.1 Background

KEBS is the National Standards Body in Kenya established under the Standards Act, Chapter 496 of the Laws of Kenya. KEBS operates an integrated quality infrastructure that encompasses Standards, Metrology and Conformity Assessment (SMCA). The SMCA services are provided through; development of standards for use by the industry, provision of testing and calibration facilities, product and system certification, undertaking educational work in standardization and practical application of standards, and maintenance & dissemination of International System of Units (SI) of measurements. These activities are critical to supporting KEBS mandate in consumer protection and facilitating trade.

The Business Amendment Bill seeks to improve the Standards Act, cap 496 by introducing amendments that strengthen KEBS capacity to exercise its mandate. KEBS issues competent local manufacturers permits to produce commodities against prescribed standards and to apply KEBS certification marks on the said products to enable them to access the local and regional markets. To boost its capacity to oversee quality manufacture of products, it is proposed to introduce changes that allow registration of manufacturers, assert the manufacturer's responsibility to produce quality products, provide for testing and calibration services by KEBS or its designated laboratories and regulation of calibration service providers.



**Kenya Bureau of
Standards**

Standards for quality life



Kenya Bureau of
Standards

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S/No.	Section	Provision in the Bill	KEBS OBSERVATION	JUSTIFICATION
1.	Section 20	<p>Insertion of a new section 5A: The Standards Act is amended by inserting the following new section immediately after section 5—</p> <p>5A. (1) A person shall not operate as a manufacturer unless the person is registered as a manufacturer under this Act.</p> <p>(2) A person who seeks to be registered as a manufacturer under this Act shall apply to the Bureau for registration.</p> <p>(3) An application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee and such other particulars or information as may be prescribed in regulations.</p>	Retain the provisions of the Bill	<p>The current Act does not provide for registration of manufacturers which denies the government information on who is engaged in manufacturing. The Government will have a database of all persons engaged in manufacturing in Kenya</p> <p>The Bureau will be able to enforce standards and monitor quality of products made by manufacturers in its database.</p>



		<p>(4) The Bureau shall, upon receiving an application under this section consider the application and any other information submitted by the applicant and —</p> <p>(a) if satisfied that the application meets all the requirements under this Act, register the applicant in the register of manufacturers and issue a certificate of registration in the prescribed form; or</p> <p>(b) if the application does not meet the registration requirements under this Act, reject the application and notify the applicant of the rejection and give reasons thereof.</p> <p>(5) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment</p>		
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		for a term not exceeding three years, or to both.		
2.	Section 21	Repeal and substitution of Section 10 C of Cap 496: 10C (1) All moneys received in respect of the Standards Levy Order shall be paid into a Bureau Account. (2) The Director, acting on the direction of the Council, may make payments out of the Bureau Account for the purposes set out in section 8(2).	Retain the provisions of the Bill	To amend the Standards Levy Fund to read the Bureau Account. Regulation 11 of the Standards Levy Order, 1990 envisaged that the Fund shall be a 'Bureau Account' The amendment will regularize the name of the account from the "Levy Fund" to the "Bureau Account".
3.	Section 22	Insertion of a new Section 10D immediately after Section 10C: 10 D (1) A manufacturer shall ensure that every product has been designed and manufactured in accordance with this Act. (2) A manufacturer shall in addition to any other obligations under this Act- (a) ensure that their products meet the requirements of the relevant Kenya standards.	Retain the provision of the Bill	The Standards Act currently does not provide for the obligations and accountability of Manufacturers. This will encourage self-regulation to enhance product compliance and protection of consumers



		<p>(b) carry out sample testing of products before releasing into the market.</p> <p>(c) have procedures for ensuring full traceability from the factory to the consumer of products manufactured for sale.</p> <p>(d) ensure the labelling meets the requirements of the relevant standards including manufacturer details, location, and ingredients/content.</p> <p>(e) investigate complaints related to the products and take appropriate action.</p> <p>(f) keep a register of complaints, non-conforming products, and product recalls; and keep distributors informed of any such monitoring.</p>		
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3.	Section 23	<p>Repeal and substitution of Section 12 of Cap 496 with a new</p> <p>12.(1) A person who manufactures, imports, stocks, distributes, sells, or exhibits a product shall ensure-</p> <p>(a) that the products comply with Kenya standards.</p> <p>(b) That the products bear a valid standardization mark issued or recognized under this Act.</p> <p>(c) that they maintain records that uniquely identify the suppliers, immediate customers, products and production at all times for purposes of traceability.</p> <p>(d) That the product has not exceeded its declared shelf life or expiry date.</p> <p>(2) The Bureau may request from any person who manufactures, stocks, distributes, sells or exhibits product any documentation and information that the Bureau requires for the purpose of carrying out its activities.</p>	<p>Retain the provisions of the bill save for 12 (1) a which should read as follows</p> <p>12.(1) A person who manufactures, imports, stocks, distributes, sells, or exhibits a product shall ensure-</p> <p>(a) that the products comply with Kenya standards and "approved specifications"</p>	<p>Currently Section 12 of the Standards Act provides that <i>"Every person to whom a permit has been issued under this Act shall, if so requested by the Council in writing, furnish within such period as may be specified such samples of any commodity to which the permit relates"</i></p> <p>It is impractical to implement this section as to ensure the integrity of the process and those of permit holders inspectors must undertake impromptu sampling and tests on products.</p> <p>In the past the Section has been used to challenge decision of KEBS for failure to issue written notice of intention to sample goods in the Market</p> <p>The change will facilitate KEBS' ability to enforce standards and protect consumers.</p> <p>Justification for Proposed change</p> <p>Where there are not Kenya Standards it is necessary to allow for acceptance of goods based other approved specifications to facilitate trade</p>
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		<p>(3) A manufacturer, or business operator who has reason to believe that a product which has been made available on the market is not in conformity with the requirements of this Act shall withdraw or recall the product.</p> <p>(4) Business operators shall cooperate with the Bureau to eliminate or mitigate risks presented by non-compliant products made available on the market.</p>		
4.	Section 24	<p>Inserting a new Section 12A: 12 A (1) The Bureau may establish laboratories which shall-</p> <ul style="list-style-type: none">(a) provide testing and measurement services and issue a test certificate.(b) produce certified reference materials and reference materials.(c) develop test methods.(d) provide proficiency testing services; and(e) provide chemical metrology services	Retain the provisions of the Bill	<p>The current Act mandates KEBS to provide testing laboratories or make arrangements to support conformity assessment.</p> <p>The proposed amendments will provide for designation of laboratories in furtherance of that mandate as a strategic focus area to facilitate destination inspection and product certification.</p>



		<p>(2) The Bureau may designate competent bodies where necessary to provide testing services and issue test certificates subject to Kenya standards</p> <p>(3) Only laboratories that have been assessed by the Bureau and found to have met criteria of assessment for designation of Laboratories shall be designated as such</p> <p>(4) Tests carried out by designated bodies are deemed to have conformed to the Bureau requirements under this Act.</p>		
5.	Section 24	<p>Inserting a new Section 12B to wit:</p> <p>12 B (1) The Bureau may establish calibration facilities which shall-</p> <p>(a) be the custodian of the national measurement standards.</p> <p>(b) realize, develop and maintain national measurement standards.</p> <p>(c) provide traceability of the national measurement standards to the International System of Units including physical, chemical,</p>	Retain the provisions of the Bill	<p>The current Act mandates KEBS to establish calibration facilities or make arrangements to support conformity assessment.</p> <p>There are persons purporting to offer this service in the industry currently there is no regulation to provide for qualification and conduct. The result is inability to maintain a quality assurance system for calibration services which may lead to inaccurate precision of equipment with negative impact on manufacturing and other sectors where precision of equipment is critical</p>



		<p>biological and medical fields of measurement.</p> <p>(d) provide national intercomparison measurements for calibration laboratories in the country</p> <p>(2) The Bureau may license and register competent bodies where necessary to provide calibration services and issue certificates subject to Kenya standards</p> <p>(3) Only calibration Service providers that have been assessed by the Bureau and found to have met criteria of assessment for designation of Laboratories shall be licensed and registered as such</p>	



Kenya Bureau of
Standards

Standards for quality life

4. 6.	Section 24	<p>12C. (1) All calibration service providers shall be required to have all their measurement standards referenced to the national measurement standards maintained by the Bureau.</p> <p>(2) The Minister, through a Gazette notice, may designate specific categories of measuring instruments and equipment used for trade, health, safety, or environmental purposes as mandatory for calibration.</p> <p>(3) The Gazette notice (2) above can also prescribe a timeframe after which the instrument/ equipment becomes illegal to use, unless they are properly calibrated.</p>	Retain the provisions of the Bill	<p>The current Act mandates KEBS to establish calibration facilities or make arrangements to support conformity assessment.</p> <p>The amendment will enable the Government through mandatory calibration to ensure the integrity of precision equipment used in critical industries like health facilities thereby safeguarding health, safety of consumers</p>
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3.0 Response to queries raised on the Business Laws (Amendment), Bill 2024

Reference is made to the subject matter and the questions raised by the Departmental committee on Trade Industry and Cooperative during Public Participation hearings on 26th and 27th November 2024 which we respond to hereby as follows:

1. SAMPLES

i) How to preserve samples and exhibits for inquiry in cases where there is an allegation of an illegality.

Samples are collected and preserved in line with the relevant Kenya standard and internal guidelines and as a standard procedure when sample for is submitted for testing a reference sample is always kept at Sample Control Centre for future reference.

ii) Who is the custodian or handles samples other than KEBS?

For the purposes of the Standards Act, KEBS has been given the mandate to sample and test on behalf of the Government. Other government agencies may collect, and handle samples collected in the course of exercising their respective mandate under statute.

iii) Can the National Assembly and the Senate have "Police Powers" directly or indirectly for search and seizure to preserve samples?

The Standards Act as currently enacted has given power to conduct searches and seizures to KEBS. Parliament exercises oversight authority over KEBS as provided in the Constitution.

iv) What happens when government agencies give contradictory reports on the suitability of goods for public consumption?

KEBS is the agency empowered by law to conduct tests for conformity assessment to Standards, Standards and internal guidelines allow for re-testing and witness testing by KEBS in cases of disputed results. It is important to note that the concerned Government agencies work collaboratively to reconcile any discrepancies in their assessments.

2. LABORATORIES

i) Who should be the official custodian of laboratories for testing?



KEBS has been mandated by the Standards Act Section 4 (1) i to provide for testing on behalf of the government with a view of determining whether products comply with the provisions of the Standards Act or any other law dealing with Standards of quality or description.

ii) Where there is controversy over samples tested by KEBS, where or who else can provide independent testing?

The Standards Act mandates KEBS to provide for testing on behalf of the government with a view of determining whether products comply with the provisions of the Standards Act or any other law dealing with Standards of quality or description. KEBS laboratories are accredited which demonstrates high technical competence and commitment to producing accurate and credible results. However, in the event that KEBS results are disputed, Standards and internal guidelines allow for re-testing and witness testing by KEBS in cases of disputed results.

iii) Can the law allow an inquiring body like parliament to acquire samples and test locally away from KEBS laboratories?

The law does not have provisions for testing of products for determination of quality other than through KEBS as provided under Section 4 of the Standards Act. The Constitution empowers Parliament to exercise oversight over agencies to ensure they carry out their mandate as vested in statutes under which they are created.

iv) Can the law allow and facilitate parliament to procure laboratory services outside jurisdiction of the country?

The law does not have provisions for testing of products for determination of quality other than through KEBS as provided under Section 4 of the Standards Act. The Constitution empowers Parliament to exercise oversight over agencies to ensure they carry out their mandate as vested in statutes under which they are created.

3. MULTI AGENCY TEAM

i) Standards Act and related law do not provide or make provision on who to be held ultimately responsible where samples seized disappear or goods that are unfit for consumption find their way to the market. How can the law be amended to deal with the above?

Where a multi-agency team is constituted, the various agencies play their role as per their express mandate under statute. KEBS is in the process of reviewing the Standards Act and there is a proposal in the draft bill to expressly spell out various responsibilities and liabilities to product quality.

4. Pre-Export Verification of Conformity (PVOC)

i) Why KEBS appoints PVOC Contractors

KEBS appoints PVOC contractors to assist KEBS in discharging mandate of ensuring sub-standard goods do not enter the county by providing a mechanism for quality verification at the country of supply. KEBS appoints PVOC contractors as per the provisions of Legal Notice 78 of 2020.

ii) Why provide for PVOC yet it was not previously in the Act?

PVOC is currently anchored under subsidiary law in Legal Notice 78 of 2020

5. What is the connection and difference between KEBS and Kenya National Accreditation Service (KENAS)?

Both organisations have distinct roles. KENAS provides the accreditation which is independent (3rd party) attestation on the competence of conformity assessment bodies to provide conformity assessment services. KEBS as the national Standards body has conformity assessment as one of the mandates. Those conformity assessment services have been accredited by KENAS as a testament that they meet the requirement of respective International Standards to accredits both local and international conformity Assessment bodies. KENAS as an accrediting body cannot undertake conformity assessment as that would constitute a conflict.

6. Why is KEBS reviewing the act now instead of doing a comprehensive review as had been stated?

The proposed amendments to the Standards Act as are targeted to prioritize urgent matters. KEBS is in the process of finalizing the comprehensive review of the Act to enhance quality control and enhance consumer protection.



Esther Ngari

Managing Director

KERICHO COUNTY

TAX LAWS (AMENDMENT) BILL, 2024

The residents supported the proposals in the bill. They noted that every citizen ought to pay their taxes diligently for the government to implement its projects. They noted that taxation and prudent use of resources given the current fiscal challenges is key in development of the country.

Clause 6

The residents supported the clause noting that this will ensure that multinational corporations contribute fairly to the tax system, especially when their effective tax rate falls below 15%. They noted that the introduction of a minimum top-up tax will help address tax avoidance strategies, where multinational groups shift profits to jurisdictions with low or no tax rates.

Clause 14

The residents supported the proposal to exempt pension benefits from taxation. This provision will ensure that retirees will no longer face tax deductions on their monthly pension incomes, providing a financial relief to individuals who depend on their pension as a primary source of income in retirement. They noted that this change is aimed at improving the financial stability of retirees and reducing the tax burden on pension payments, which have traditionally been subject to income tax. They recommended to increase the pension benefits some of the retirees receive since most retired long ago. Additionally, they emphasized on the need to factor in the current inflation and cost of living. They recommended having inflation adjustments and timely disbursement of the funds.

Clause 15

The residents supported the proposal to introduce a 5% and 20% withholding tax on residents and non-residents respectively. They noted that digital platforms continue to grow, particularly for freelancing and content creation, and this will ensure everyone is

within the tax bracket. Those in support emphasized on the fairness in taxation and recommended increasing the rate for non-residents.

Although the residents supported this proposal, some proposed lowering the rate to 1%. they submitted that some of them are unemployed and this will discourage the youth from using this platform to make any income. Further, some proposed having bands to distinguish the high-income earners from those who make minimal returns.

Clause 20

The residents supported the exemptions on raw materials for sanitary towels and diapers. They noted that women have had challenges accessing these commodities. They recommended to zero-rate them to make them cheaper.

Clause 25

The members of Kericho County supported the proposals to increase excise duty on alcohol, spirits, wines and cigarettes. They noted these commodities have had negative impact on people's health contributing highly to people contracting lung, stomach and throat cancer. They recommended increasing the rate by 10% to 50% as a way of discouraging people especially the youth from using them. Additionally, the recommended curbing illicit brews that are rampant in the country and do not fall under taxation.

TAX PROCEDURES (AMENDMENT BILL) (NO.2) BILL,2024

The Kericho County residents supported the bill. They noted the extension of the tax amnesty program until 2025 will provide taxpayers with an opportunity to settle outstanding tax obligations without facing heavy penalties or interest. However, they noted that the KSh.20,000 is too high for a common citizen to avoid and recommended reducing the amount or leaving it as currently is.

BUSINESS LAWS (AMENDMENT) BILL,2024

The residents of Kericho County Supported the amendment to the various Acts. Specifically, they noted that the amendments to the Banking Act, that seeks to increase

core capital requirements for banks and mortgage institutions, will strengthen the financial sector and ensure its flexibility against global economic shifts. They noted that previously, the sector has 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.

The residents 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. This amendment they noted is timely especially in the bodaboda sector that most of the 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.

PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.3) BILL, 2024

The residents of Kericho County supported the amendments noting that this will improve fiscal accountability and efficiency in Kenya's devolved governance system. They highlighted that these amendments will strengthen public confidence in financial governance while ensuring the equitable and efficient use of resources across all levels of government. They noted that there should be accountability in all levels of government with prudent use of the resources. They proposed having the health, education and agriculture functions in the national government to avoid instances of strikes by union. Also, they urged the government to increase and have timely disbursement of funds to counties noting the important role the county government offer.

PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.4) BILL, 2024

The members of Kericho county supported the bill noting that the enforcement of public debt thresholds, will promote sustainable borrowing and prudent fiscal planning. Additionally, introducing frameworks for accrual accounting and risk management will enhance transparency and financial oversight. The members emphasized on the need of the country financing its projects and budgets locally and minimize on external borrowing.

PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)

BILL, 2024

The Kericho County residents submitted that the bill is important in encouraging economic growth and promoting equity in procurement. They noted that reserving contracts below KES 1 billion exclusively for Kenyans will create a conducive environment for local companies to thrive and compete. Kenyan contractors have previously competed with foreign companies to get such contractors. They highlighted the challenges the contractors have faced with increase of instances of corruption for one to secure a contract. They emphasized that these amendments will ensure fair distribution of wealth by requiring foreign firms to partner with local entities on larger contracts, guaranteeing at least 30% local participation. The mandatory sourcing of 40% of goods and services from local manufacturers supports industrial growth and job creation.

ISIOLO COUNTY

PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL NO. 3, 2024

Transfer of Functions

The members of Isiolo County expressed strong support for the proposal on the transfer of functions, highlighting its potential to streamline governance and enhance cooperation between the county and national governments. They emphasized that the proposal would clarify roles and responsibilities, reducing the likelihood of conflicts and jurisdictional disputes that have historically delayed critical projects, resulting in inefficiencies and wasted resources. The members also welcomed the provision for funding these transferred functions from budgets previously approved for the transferring level of government. They noted that, coupled with standardized costing frameworks outlined in manuals provided by both national and county governments, this arrangement would ensure that resources are allocated efficiently and transparently, enabling smoother coordination, faster decision-making, and the timely completion of development projects.

PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL NO. 4, 2024

Members of Isiolo County expressed their disapproval of the Bill's proposal to delay the implementation of the 55% and 5% borrowing limits. They argued that postponing these thresholds, set to take effect five years after the Act's commencement, would have serious consequences. According to the members, this delay would allow the government to borrow extensively without public oversight or accountability. They cautioned that such a move would enable the government to engage in unchecked borrowing repeatedly, without fully considering the long-term economic and social consequences. This lack of restraint, they warned, could lead to unsustainable debt levels, ultimately burdening future generations and potentially destabilizing the country's economy.

TAX LAWS (AMENDMENT) BILL, 2024

Clause 6- Minimum top Up tax

Members proposed amending the clause to set a firm threshold of either 30% or 40%, emphasizing the need for stricter limits on deductions. They expressed concern that many multinational companies frequently report excessive expenses, which significantly reduce their taxable income and, consequently, their tax liability. According to the members, this practice undermines the country's revenue collection efforts, depriving the government of much-needed funds for development and public services. They argued that by capping the allowable deductions at a reasonable level, the amendment would help ensure that these corporations contribute their fair share of taxes. Additionally, they highlighted that without such measures, multinational companies could continue to exploit loopholes in the tax system, perpetuating unfair practices and placing a disproportionate burden on local businesses and individual taxpayers.

Clause 4

Members of the public were not in support of the clause on the withholding tax for digital marketplaces, arguing that it would increase the cost of doing business in the country. They expressed concerns that the additional tax burden could discourage investment and

innovation within the digital economy, which will affect the growth of digital platforms in Kenya. Critics further pointed out that the increased costs might be passed on to consumers, leading to higher prices for goods and services.

Clause 7

The public expressed strong support for the proposal to make contributions to the Social Health Insurance Fund (SHIF) and the Affordable Housing Levy tax-deductible. They noted that this measure would effectively increase employees' disposable income, as it would reduce their overall tax burden. According to the public, with more money in their pockets, workers would have greater financial flexibility, which could spur both investment and consumption.

They argued that increased disposable income would encourage employees to save or invest in personal ventures, thereby promoting economic growth. Additionally, higher consumption levels would boost demand for goods and services, benefiting businesses and creating more job opportunities. The public emphasized that this policy would not only support individual financial well-being but also stimulate broader economic activity, helping to achieve sustainable growth.

Moreover, they highlighted that making these contributions deductible would enhance the appeal of the SHIF and Affordable Housing programs, encouraging greater participation. This, in turn, would ensure the success of these initiatives, improving access to healthcare and affordable housing for many citizens. They urged policymakers to prioritize this amendment, viewing it as a practical step toward improving both personal and national economic outcomes.

Clause 14

Members of the public were in support of the provision to exempt pensions from tax, arguing that retirees should not face additional financial burdens in their later years. They emphasized that pensions are often the primary source of income for many retirees, and taxing them would reduce their disposable income, potentially impacting their ability to meet basic needs such as healthcare and housing. Supporters further noted that exempting pensions from taxation is a way to honor the contributions of retirees during their working years, providing them with a measure of financial security and dignity in retirement. They contended that this exemption would also help reduce poverty levels among the elderly population.

Clause 20- Aircraft

The public expressed strong support for the proposal to subject Value Added Tax (VAT) to aircraft and spare parts, arguing that this move would create a more competitive market for locally manufactured products. They highlighted that the exemption of VAT on imported aircraft and parts has historically disadvantaged local producers, making it difficult for them to compete.

Clause 20- Exemption of Fertilizer from VAT

Members of the public expressed support for the proposed VAT exemption, recognizing its potential to benefit certain sectors of the economy. However, they also raised concerns about its impact on the final consumer. They noted that while businesses might benefit from the exemption, the cost savings would likely not be fully absorbed by the producers. Instead, the VAT would be transferred down the supply chain, ultimately increasing the prices of goods and services for the end consumers. This, they argued, could place an additional financial burden on ordinary citizens, particularly those in lower-income brackets, and might

counteract the intended benefits of the exemption. Therefore, they urged policymakers to consider mechanisms to mitigate these effects and ensure that the exemption provides broad-based advantages.

Clause 23

Some members of the public in Isiolo County expressed support for the proposal to exempt excise duty on agricultural products used in the production of beer and spirits. They argued that this exemption would boost the market for locally produced agricultural goods, providing farmers with more stable and profitable outlets for their crops. According to these supporters, such a measure would encourage investment in local agriculture, stimulate rural economies, and create jobs along the value chain, from farming to processing and distribution. They also noted that the increased demand for local raw materials would reduce dependency on imported inputs, thereby strengthening the domestic economy.

However, other members of the public held a different view, advocating for the removal of all taxes on agricultural products, not just those used in alcohol production. They emphasized that agriculture is the backbone of the economy and argued that eliminating taxes across the board would lower production costs, making local products more competitive both domestically and internationally. This, they contended, would benefit a wider range of farmers and agribusinesses, ultimately leading to greater food security and economic resilience. Both groups, however, underscored the importance of supportive policies to maximize the potential of the agricultural sector, recognizing its critical role in fostering economic growth and improving livelihoods.

Clause 24

Most members of the Isiolo County expressed support for the extension of the timeline for the submission of excise duty on alcoholic beverages, from 24 hours to the 5th day of the following month. They argued that the proposed extension would ease the administrative burden on businesses, allowing them more time to accurately calculate and submit their taxes. Supporters highlighted that the current 24-hour deadline is impractical, particularly for smaller businesses that may lack the resources to comply within such a short timeframe. They also noted that the extended timeline would improve tax compliance by reducing errors and the likelihood of late submissions, ultimately benefiting both businesses and KRA.

Clause 25

Some members of Isiolo County proposed amending the clause to specify that revenue collected from taxes on alcoholic beverages should be earmarked for rehabilitation and related support services. They argued that simply increasing taxes on alcohol without a clear and targeted plan to address addiction and its associated challenges would not effectively tackle the underlying issues. According to the members, many individuals in the community are already struggling with alcohol dependency, and without access to proper rehabilitation programs, higher taxes would only worsen their plight.

The members emphasized that alcohol addiction often leads to devastating social consequences, including the breakdown of families, loss of livelihoods, and increased health complications. They noted that allocating these funds to rehabilitation centers, counseling services, and public awareness campaigns would provide much-needed support to those battling addiction, helping them regain control of their lives.

Meanwhile, some individuals opposed the proposal altogether, arguing that increasing taxes on alcohol could inadvertently drive more people toward consuming illicit and unregulated alcohol. They warned that this could lead to serious health risks, including poisoning, and exacerbate social problems such as crime and family breakdown. These opponents stressed the need for a balanced approach that would support the agricultural sector without encouraging harmful alternatives in the alcohol market.

Clause 26

Not in support of increase of RDL

General Support of the Bill

Most members of the public expressed their support for the Bill, recognizing its potential to improve revenue collection and enhance service delivery. They acknowledged that the proposed measures could help strengthen the economy by increasing government resources to fund critical sectors such as healthcare, education, and infrastructure. However, they emphasized that for the Bill to achieve its intended goals, it is crucial to ensure that the revenue collected is managed transparently and used effectively to benefit all citizens. The public stressed that the government must implement strong accountability measures to prevent misuse or misallocation of public funds.

Additionally, they highlighted the importance of equitable distribution of resources to ensure that no region or community is left behind. Many pointed out that fair use of public funds is essential in addressing disparities and promoting inclusive development. They urged policymakers to prioritize projects that would have the most significant impact on improving livelihoods, particularly in marginalized areas.

General- Rejection of the Bill in its entirety

A few members of the public were against the Bill, arguing that it would impose unnecessary tax burdens on the people of Kenya without providing clear, accountable benefits. They expressed concerns that the additional taxes would exacerbate the financial strain on both businesses and consumers, particularly in an already challenging economic environment. These critics highlighted the lack of transparency regarding how the revenue generated from the tax would be used, questioning whether it would be properly managed or simply contribute to further government inefficiencies.

TAX PROCEDURES (AMENDMENT) BILL 2024

Clause 3

Members of the public expressed strong support for the tax amnesty extended up to 30th June 2025, viewing it as a positive step for both individuals and businesses struggling with tax arrears. Supporters argued that the amnesty would provide a much-needed opportunity for taxpayers to clear their debts without facing severe penalties or legal repercussions. They believed it could encourage voluntary compliance, increase tax revenue, and reduce the burden on the tax administration system. Many also felt that the extended deadline would give businesses, especially small and medium-sized enterprises, enough time to recover from the economic challenges caused by factors such as the pandemic and inflation.

BUSINESS LAWS (AMENDMENT) BILL, 2024

Clause 28

Members of Isiolo County proposed amending the clause to introduce stricter regulations for the scrap metal industry. They expressed concern that, under the current framework, most licensed traders in the industry are misusing their operations by purchasing stolen metals. The members highlighted that this has led to increased theft of vital infrastructure, including power lines, railway tracks, and road signs, resulting in significant financial losses and disruptions to public services.

They argued that without stricter controls, the industry would continue to incentivize criminal activities, posing a serious threat to both public and private property. To address this, they proposed measures such as tighter licensing requirements, mandatory record-keeping for all transactions, and stricter penalties for businesses found dealing in stolen metals. They also called for regular inspections and audits by regulatory authorities to ensure compliance.

According to the members, these amendments would bring much-needed accountability to the scrap metal trade and deter criminal elements from exploiting the industry. They emphasized that protecting critical infrastructure and maintaining public safety must be prioritized through more rigorous oversight and enforcement.

Clause 29-36

Some members of Isiolo County proposed amending the clause to explicitly include provisions for the involvement of county governments in the implementation of special economic zones (SEZ) programs. They emphasized that land management is a devolved function under the Constitution, making it essential for county governments to play a central role in the planning, allocation, and oversight of land designated for SEZs. According to the members, excluding counties from these processes would undermine the principles of devolution and could lead to conflicts or mismanagement of resources. They argued that county governments possess crucial local knowledge and are better positioned to address the unique needs and priorities of their communities. Involving them in SEZ programs would not only ensure more equitable and sustainable development but also foster local ownership, thereby enhancing the effectiveness and success of these initiatives.

Clause 38

Members of Isiolo County proposed amending the Clause to remove the powers of the Cabinet Secretary to determine tax exemptions. They expressed strong concerns that leaving such authority in the hands of a single official could create opportunities for corruption and abuse of power. According to the public, the current provision lacks adequate checks and balances, making it vulnerable to misuse, where exemptions could be granted arbitrarily or in exchange for personal or political favors.

They argued that tax exemptions should be guided by clear, objective criteria established in law, rather than being subject to the discretion of an individual. By eliminating this discretionary power, the amendment would promote transparency and accountability in the tax system, reducing the risk of favoritism and ensuring that exemptions are granted only when they genuinely serve the public interest. Members further warned that if this power remained unchecked, it could undermine public confidence in the government's commitment to fair and equitable tax policies, potentially leading to revenue losses and economic inefficiencies.

General -

Members of the public expressed support for the Bill, particularly the amendments that 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. Supporters 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

PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024.

Clause 5

Members of the public expressed strong support for the proposal to award locals 30% of a government tender. Many pointed out that, for the most part, most government tenders are often awarded to foreign contractors, who take the money back to their countries of origin, leaving little benefit for the local economy. They argued that this practice not only deprives local businesses of opportunities but also hinders the growth of the domestic market.

BUNGOMA COUNTY

TAX LAWS (AMENDMENT) BILL, 2024

The residents of Bungoma County expressed their strong support for the proposed bill, highlighting the critical role of taxation in ensuring efficient service delivery. They highlighted the necessity for every citizen to contribute their fair share of taxes, emphasizing that these contributions should be managed transparently and efficiently for the benefit of all. Also, they stated that expanding the tax base would reduce the government's reliance on borrowing. In particular, they supported taxing multinational corporations operating within the country, pointing out that these entities rely heavily on local labor and infrastructure. The residents also urged the government to exercise prudence in revenue management by curbing wasteful spending and aggressively tackling corruption to maximize the impact of collected taxes.

Additionally, residents called for robust public sensitization and meaningful civic education to ensure citizens fully understand the bill's provisions. They stressed the importance of engaging the public through inclusive participation processes. They noted the importance of the public having a clear understanding of the bills suggested before airing their views on the proposals. Furthermore, they advocated for equitable revenue distribution to counties to strengthen devolution and enhance service delivery at the grassroots level.

Clause 6

The public supported the proposal to tax multinational enterprises (MNEs) operating in Kenya, particularly those in the digital and globalized economy. They stated that the minimum top up tax aims to capture revenue from corporations benefiting from local markets without contributing adequately to the tax base.

Residents emphasized that taxation of MNEs would address economic imbalances where large corporations often exploit low-tax jurisdictions, depriving the country of critical revenue. They stated that this also aims to improve tax compliance and fairness, ensuring that foreign businesses contribute their fair share to Kenya's economy.

Clause 7

The public expressed strong support for making contributions to the Social Health Insurance Fund (SHIF) deductible under the tax laws. Making these deductions allowable would incentivize individuals and employers to contribute to universal health coverage, thereby enhancing access to essential healthcare services for all Kenyans. They emphasized that prioritizing health-related tax incentives ensures that Kenyans, particularly vulnerable groups, can access affordable healthcare while reducing the financial burden on households.

Clause 14(a)

The proposal to exempt pension benefits from taxation was met with widespread support, with residents emphasizing its potential to improve the quality of life for retirees. Many retirees depend solely on their pensions for sustenance, and taxation on these benefits reduces their already limited disposable income. They noted that exempting pensions from tax would allow older individuals to better manage healthcare costs, support their families, and maintain a dignified standard of living. Stakeholders also highlighted that tax exemptions could encourage more people to save for retirement.

Clause 15(ii)(B)(iii)(o)

The residents supported the proposal to impose a 20% withholding tax on non-residents operating in digital marketplaces. They argued that this measure would significantly increase government revenue, which could then be used to bolster devolution efforts and reduce reliance on external borrowing. They highlighted the potential of such taxation to fund essential services and infrastructure projects, contributing to national development.

The residents also raised concerns about the digital marketplace tax rate for residents. They recommended reducing the rate from the current 5% to 2.5% or even 1%, emphasizing the economic challenges faced by unemployed youth. Many young people rely on digital platforms for their livelihoods, such as freelancing, and content creation, where their earnings are often low. A lower tax rate, they argued, would encourage more participation in the digital economy and provide them with additional disposable income to reinvest in their businesses. Moreover, youths stressed the need for the government to create employment opportunities to allow for greater economic contributions through taxes.

Although some residents supported the clause with minimal amendments, there was opposition to the proposal altogether, with some members of the public cautioning against double taxation. They pointed out that many digital platform payments already incur taxes at the source, and additional withholding taxes could unfairly burden individuals operating in this sector. They proposed having clearer guidelines to ensure fairness and prevent double tax obligations.

Clause 20

The proposal to exempt raw materials used in manufacturing sanitary towels and diapers from VAT was supported by most residents. They emphasized that this measure would make these essential products more affordable for women and girls, directly addressing a critical need for menstrual hygiene and childcare. The public highlighted the significant impact on women's health and education, with affordable sanitary products helping to reduce absenteeism among schoolgirls. However, some members of the public recommended zero-rating these products instead of exempting them. Zero-rating would allow manufacturers to claim input VAT, reducing overall production costs further and ensuring that the tax relief is fully passed on to consumers.

Additionally, some residents expressed concerns about removing the raw materials for agricultural products from the zero-rated category, arguing that most farmers rely on affordable inputs to maintain their livelihoods. Increased costs could reduce agricultural productivity and profitability, directly affecting the communities that depend heavily on farming. They proposed zero-rating agricultural inputs, particularly seeds, which residents noted are already too expensive with majority of the members being farmers.

Further, they proposed increasing taxes for aircrafts and aeroplanes noting that the people who own these planes can afford to pay more taxes.

Rejection of the Bills

Some residents rejected the bill in its entirety. They raised concerns on the proposed measures, particularly those affecting the digital economy, manufacturing, and agriculture, saying they risk worsening the economic burden on citizens. They noted the increased withholding tax rates for digital marketplaces and the removal of zero-rating on agricultural inputs as measures likely to stifle innovation, inflate production costs, and hinder growth in vital sectors. Additionally, they emphasized that the bill does not sufficiently address issues of tax equity and the taxes collected

are not accounted for. Furthermore, the stakeholders cited the potential for reduced investor confidence, with new taxes on multinationals seen as possibly deterring foreign investment.

MOMBASA COUNTY- TONONOKA HALL

PUBLIC FINANCEC MANAGEMENT (AMENDMENT) (No. 3)BILL, 2024

Clause 2

The members of Mombasa county supported the proposal on the transfer of functions between national and county governments highlighting the need for more funding at the county level. The members outlined that county governments being at the grassroots with direct relationship with the citizens, will ensure that resources are allocated and managed effectively and efficiently.

General Recommendation on the Act

The members of Mombasa county recommended the government to come up with a legislation or law to have a one county one product policy, where each county focuses on the production of specific products. This will help on reducing imports, will ensure quality production and at the same time promote local manufacturing in the country.

TAX LAWS (AMENDMENT) BILL, 2024

Clause 3

Members of Mombasa county proposed to amend the proposal to have the tax-free threshold of retirement benefits increased from the KES. 360,000 to KES.500,000. Further, some members proposed to have the threshold capped at 50%. This will help in an increase in disposable income. Similarly the members proposed to amend the proposal to increase tax free employment benefits threshold from KES.60,000 to KES. 100,000.

Clause 4

Members of the public were not in support of the proposal to introduce withholding tax for digital marketplace because it will increase the cost of goods and services acquired through digital platforms. The members also noted that the burden of the taxes will be passed onto consumers. Additionally, the proposal will discourage innovation which will limit the application of the rapidly growing technology.

Clause 6

Members of Mombasa county support the proposal for it will promote fairness in payment of taxes as well as healthy competitive business environment. On the other hand, some members of the public reject the proposal because the costs of production for multinationals is low compared the cost of production for local firms. Imposing the tax will discourage investors which will lead to increased cost

of products by local firms and the cost of imports. It will also promote unemployment.

Clause 7

The public strongly supported the proposal to make contributions to the Social Health Insurance Fund (SHIF) and the Affordable Housing Levy tax-deductible. They argued that this will reduce their overall tax burden and increase disposable income, which will encourage the culture of saving and promote investment thereby promoting economic growth. The public emphasized that this would benefit businesses and will also create more job opportunities.

Clause 14

Members of the public were in support of the proposal to exempt pensions from tax, stating retirees should not be subjected to tax burdens after retirement. Pensions being the primary source of income for retirees, imposing taxes reduces their disposable income thus exposing them to poverty. Retirees should freely access basic needs without any burden of taxes.

Clause 20

The members of the public fully supported the proposal to exempt absorbent product materials from tax for it will reduce costs of the finished products making them affordable to citizens.

Clause 23

Members supported the proposal to exempt agricultural products used in production of beer and products from excise duty. This will encourage local agriculture in the country and stimulate growth of domestic economy. Further, other members of the public rejected the amendment arguing that it will promote uncontrolled drinking and addiction to illicit brew which is a major setback to family institutions and the education sector. Further, they noted the need to have a balance between controlling illicit brewing and boosting local growers. The government should ensure strict measures like licensing of alcohol producers to avoid misuse.

Clause 25.

The members of the public support the proposal to exempt locally assembled electric vehicles from excise duty because it will promote local industries.

THE BUSINESS LAWS (AMENDMENT) BILL, 2024

Clause 5

The members of the public supported the proposal to have non-deposit taking credit institutions regulated by the Central Bank of Kenya, raising concerns on the criteria to be used in regulating the credit institutions. Additionally, the proposal will have credit institutions increasing lending fees due to strict regulations which will be expensive to the client who are the end beneficiaries of the credit facilities.

General Recommendation on the Act

The members proposed to have 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.

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024

Clause 5

Members of Mombasa county supported the proposal to have local firms largely benefit from 30% of government tenders. They encouraged implementation of the proposal by noting the need for inclusivity and fairness in awarding the tenders. They also urged the government to observe the principle of conflict of interest, as a way to curb corruption.

General -Support of the Bills in entirety

Members of Mombasa County supported the proposals of the government to raise revenue through taxation, emphasizing the need for transparency and accountability in allocation and utilization of revenue raise. They stated that taxation should be visible and impactful to citizens through service delivery and development by the government.

General- Rejection of the Bills in entirety

Some members of Mombasa county rejected the bills, citing lack of benefit from the revenue collected from taxes. They argued that the government burdens the people of Kenya with taxes, who in return face hard economic times instead of the vice versa. They emphasized on the need of proper utilization of public resources by the government and effective accountability.

General Recommendations

Members of Mombasa county urged Parliament to promote and enhance effective public participation through conducting civil education on the proposed bills so as to help create awareness.

The members also urged the government to consider special groups of people living with disabilities especially in the education sector. They noted that PWDs should be exempted from paying school fees in public education institutions so as to ensure inclusivity and . Additionally, the equipment used by the people living with disabilities should also be exempted from excise duty to make them easily accessible by the special group.

TAITA TAVETA COUNTY- MWATATE CDF HALL

PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.3) BILL, 2024

The members of the public supported the transfer of functions between the national government and the county government by noting the need to have county governments synchronize their county revenue collection systems. This would ensure smooth collection of taxes as well as allocation of resources.

All members of Taita Taveta county raised concerns of the consistent delay in disbursement of funds to the county government. They expressed their fear of delayed service delivery due to lack of funds. Citizens are not able access medication from hospitals , families are not able to cater for their needs because of delayed salaries and the economy is equally deteriorating due to lack of development.

PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.4) BILL,2024

The members were against the proposal, by expressing their dissatisfaction and lack of trust in the government. They cited poor performance of the government highlighting the inability to deliver services, despite them paying taxes to raise revenue and through borrowing. They also stated that the burden of taxation should be accompanied visible results of development, service delivery, transparency and accountability.

Further, members of Taita Taveta pointed out that taxpayers are servicing loans that were borrowed by the government and did not benefit Kenyans. They urged the government to adhere to Chapter 6 of the Constitution of Kenya, 2010 on 'Leadership and Integrity', which outlines the ethical code of conduct for state officers and public entities.

TAX PROCEDURES (AMENDMENT) BILL,2024

Clause 3

The members supported the proposal on the extension of the tax amnesty program till 30th June, 2025. The relief from penalties is a relieve for Kenyans because the rate at which penalties are claimed by KRA disadvantages taxpayers compared to the rate at which taxpayers request for refunds on overpayment of taxes.

Clause 6

The Members of Taita Taveta county supported the proposal to have a simplified treatment of overpaid taxes noting that it will help in offsetting other taxes instead of going through the process of claiming for a refund. They also proposed measures to have overpaid taxes refunded with an interest charge.

Clause 24

The proposal to extend the deadline for payment of excise duty by manufacturers of alcoholic beverages from 24hrs to 5th day of the following day received mixed reactions from members of Taita Taveta county. Some supported the proposal stating that it would lead to easy cashflow management by the manufacturers and also proper planning. On the other hand, some members argued that despite the proposal being a sin tax that will raise revenue for the country, it strongly advocates for alcoholism and addiction, which is a vice in the African society.

TAX LAWS (AMENDMENT) BILL,2024

Clause 8&9

Most members of Taita Taveta county supported the proposal to have pensions exempted from tax. They stated that it would increase the disposal income of retirees which will make them live an affordable comfortable life.

The proposal on the tax-free retirement benefits be amended to a threshold of KES.500,000.

Clause 5

The proposal to introduce the Significant Economic Presence Tax for multinationals was rejected for it would discourage investors and also affect Kenyans negatively. Multinationals contribute to the growth of the economy by creating employment and promoting industrialization. The members noted the fact the government has to raise money through this proposal, but argued that some regulations in the country discourage Kenyans from investing locally. For instance, the costs of business registration and getting business permits in Kenya are very expensive both in terms of money and time.

In addition, imposing the new tax would shift the burden to the consumers who are Kenyans. The products and services from multi-nationals have been proved over time to be of good quality and standards are affordable. The proposal would most likely impose the tax burden to Kenyans who are already taxpayers, through increased costs of goods and services.

Lastly, Kenyans working for multinational companies acquire different knowledge and skills which later help them in life. Introducing this tax and would prohibit innovation and industrialization.

Clause 6 (12G)

The proposal to have multinational Corporations pay a minimum top tax was supported with an amendment to have a specified rate or amount known as minimum top up tax which multinationals will be expected to remit if the ratio of tax paid on their consolidated earnings is less than 15%. This will help avoid calculations of tax based on assumptions and will also prevent the problem of non-disclosure.

Clause 13

Members of the public were against the proposal to introduce withhold taxation on digital platform earnings. They argued that users of digital platforms are categorized as small-scale businesses who provide goods and services with small earnings thus subjecting them to tax burdens will be unfair to them. Additionally, some members were interested in the criteria to be used in identifying the digital platforms to be subjected to tax.

Additionally, some members argued that the proposal would be deemed double taxation. They stated that trading on digital platforms entail s several charges that are incurred when purchasing goods and offering services online. The charges include mobile transfer transaction costs and also the prices of products being purchased, of which VAT is always inclusive.

Clause 20 (V)

The proposal to exempt absorbent product materials from VAT was impressively supported with citizens of Taita Taveta county. This would lower the prices of products like diapers and sanitary towels making them affordable to families and women respectively.

Clause 21(a)

The members of Taita Taveta county supported the proposal to have agricultural inputs exempted from VAT. This would encourage farming in the country, which will lead to an increase in production. Further, the members noted the need to also have imported farm equipment exempted from taxes so as to reduce on the cost of equipment.

BUSINESS LAWS (AMENDMENT)BILL, 2024

Clause 4,5,6,7,8,9,10,11&12

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

Scrap metals

The members of Taita Taveta strongly supported the proposal to have the scrap metal council restructured for better governance and inclusivity. They proposed to have strict regulations governing against vandalism of property to get scrap metals in the region. Other members proposed to have the Scrap Metal Council and other irrelevant offices scrapped off and not restructured, arguing that it will help cut down on recurrent expenditure.

PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024

The proposal to have local firms get 30% of government tenders was supported. This will promote industrialization and also create employment locally.

General support of all bills in entirety

Most members of Taita Taveta county supported the proposed bills by agreeing with the government's proposal to raise revenue. However, they insisted on the prudent allocation and utilization of public resources.

General Observations

The members stated that the government is overtaxing Kenyans extensively yet they cannot cater for their own basic needs. They noted the continuous high cost of living which is caused by high costs of fuel. They urged the government to revive the oil refinery which was a reliable source of employment and income, as well as cheap and affordable fuel in the country.

The members also urged the government to offer services to the senior citizens free of charge .For instance, registration for SHA should be declared free for retired Kenyans who are being exempted to pay taxes on their pension

The members proposed to have an amendment of the East African Community Act, to have no taxes imposed on products leaving the county as exports so as to encourage healthy competition and promote local manufacturing. It also creates a balanced marketing ground for local business as well as foreign businesses within the region.

PUBLIC PARTICIPATION SIAYA COUNTY

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 48 OF 2024) SPONSORED BY THE HON. KIMANI KURIA, MP

The residents of Siaya county made submissions in support of the Bill stating that the Bill introduces positive reforms aimed at fostering economic growth, enhancing accountability and promoting local participation. They highlighted as follows;

i. Clause 3

That by ensuring foreign procurement contracts align with Kenyan laws, it will safeguard national interests, prioritize local suppliers and ensure that projects meet the economic and social objectives. They further stated cases of underpayment of workers and suppliers by foreign contractors stating that the proposal will ensure equitable terms and conditions in contracts to prevent exploitation from foreign contractors.

ii. Clause 4

That the monitoring and evaluating of knowledge and skills programmes will help build local expertise, reducing dependency on foreign contractors. They further stated that the requirement for annual public reports will hold entities accountable to fulfil their obligations and ensure the public and stakeholders can monitor progress, fostering trust in the procurement process.

iii. Clause 6

That prioritizing locally manufactured goods and services safeguards the interests of local manufactures. This prevents the market from being dominated by external suppliers, fostering regional economic stability. They also stated that prioritizing county-based products aligns with the constitutional principles of devolution by enhancing local participation in public procurement.

iv. Clause 11(a)

That the proposal to reserves tenders below Kshs. 1billion for Kenyan firms is a protective measure from competing with foreign companies. They further noted that for tenders exceeding the threshold, the emphasizes that a foreign firms must enter joint ventures with local companies, allocating at least 30% of the procurement value to the local company ensures equitable sharing of economic benefits and fosters sustainable development.

v. Clause 26

That the proposal will ensure that contractors delivering substandard goods and services face severe penalties. This will ensure quality outcomes in public projects.

THE TAX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2024) SPONSORED BY THE LEADER OF THE MAJORITY PARTY, HON. KIMANI ICHUNG'WAH, EGH, MP

The residents of Siaya county made submissions in support of the Bill stating that the proposals contained in the Bill seek to widen the tax base, enhance revenue collection, support economic development and improve fairness. They highlighted as follows;

i. Clause 15(ii)(B)(iii)(n)

The proposed introduction of withholding tax on the supply of goods to public entities is aimed at ensuring tax compliance by suppliers as it will provide visibility of the tax on the income earned.

ii. Clause 20(a)(i)(ii)(iii)

The proposed amendment is aimed at ensuring fair taxation stating that the aviation sector only affects a select group of people.

iii. Clause 20(a)(x)

The proposed tax exemption will boost the local manufacturing industry for agricultural control products and fertilizers, directly reduce the financial burden on farmers. The exemptions will promote incentivize investment in modern farming techniques. They further stated that this measure will also ensure food security and equitable economic growth.

iv. Clause 25(a)(i)(C)(D)(E)(F)

They proposed an increase of the proposed excise duty rate on cigarettes with filters, without filters, products containing nicotine or nicotine substitutes and liquid nicotine used in electronic cigarettes. They stated that higher prices for cigarettes may serve as an effective public health measure to curb addiction, to improve health outcomes. This will also be a source of revenue for the government.

v. Clause 25(a)(i)(J)

The residents were of the opinion that proposed exercise duty rate on wines and alcoholic beverages based on alcohol content be increased, stating that, heightening taxes on alcoholic products will discourage excessive consumption, promoting healthy lifestyles.

Further, the residents of Siaya county while in support of **Clause 9**, stated that the proposal shall further enhance benefits as highlighted in the Bill. However, they were of the opinion that, the Pensions Act be amended to revise the minimum pension amount granted to an officer under the Act that has been in place for more than a decade to respond to the high inflation rates.

The residents of Siaya county while rejecting some provisions the Bill seeks to amend, highlighted as follows;

- i. **Clause 15(ii)(B)(iii)(o)** be deleted as the digital marketplace offers various opportunities to the unemployed especially the youth. They stated that digital marketplace are often taxed at the source with the platform responsible for collecting the remitting taxes.
- ii. **Clause 22** be deleted as introducing excise duty on digital services provided in Kenya by non-resident businesses through digital platforms will result to the businesses adjusting their pricing, therefore potentially passing the additional costs onto Kenyan consumers.
- iii. **Clause 26** be deleted since increasing the railway development levy from 1.5% to 2.5% will result in an increase in the cost of imports and potentially increase the cost of commodities such as cars, fuel and food. The additional cost will eventually be passed onto consumers.

THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NP. 49 OF 2024 SPONSORED BY THE LEADER OF THE MAJORITY PARTY, HON. KIMANI ICHUNG'WAH, EGH, MP

The residents of Siaya county made submissions in support of the Bill stating that the Bill seeks to balance economic growth, by standardizing compliance requirements. They highlighted as follows;

Clause 4

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

28 November 2024

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK
P.O BOX 41842-00100
NAIROBI. KENYA

REF: NA/DDC/TRADE/2024/150

Dear Sir/Madam

Please see below our submission in response to your invitation to provide our memoranda on the Business Laws (Amendment) Bill 2024 (National Assembly Bill no. 49 of 2024

Regarding the Insertion of a new section 10A in Cap.496A

Recognizing the general principle from the WTO Agreement on Technical Barrier to Trade (TBT) to which Kenya committed following its accession as a member of the WTO in 1995.

Recognizing that Kenya Accreditation Services (KENAS) is a signatory of ILAC Mutual Recognition Agreement.

Recognizing that Kenya has signed and ratified the AfCFTA agreement is actively involved in implementing the agreement, notably through the development of national policies aligned with AfCFTA objectives.

The following is submitted:

Kenya is required to comply with the obligations of this agreement, which aims to ensure that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

This agreement under the World Trade Organization promotes non-discrimination and mutual recognition of standards and accreditations to facilitate global trade. It encourages countries to accept accreditations issued by foreign bodies, provided they comply with international standards. The Kenya Accreditation Service Act (cap 496A) amplifies the same under clause 6, especially clauses 6(c), 6(d) and 6 (i).

Upon that, the mutual recognition agreement is based on fundamental principles such as (non-exhaustive):

- Standard Harmonization
- Mutual recognition of Test Results
- Transparency & Traceability
- Continuous improvement

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These principles ensure that the results of accredited laboratories and organizations are reliable, recognized worldwide, and facilitate international trade by reducing technical barriers.

Kenya is actively involved in the implementation of the AfCFTA, positioning itself as one of the promoters of the agreement and its success. The standard harmonization of standards can only be effective when coupled with mutual recognition agreements (MRAs), which are key mechanisms in this process, facilitating the circulation of goods and services.

Finally, the enforcement of this amendment within the business law would be a step backwards on the various agreements signed by the country.

It could undermine the confidence of regional and international partners and damage the country's competitiveness without adding any value.

Regarding the Insertion of a new section 12A in Cap.496A

Recognizing that Accreditation schemes are designed to ensure that conformity assessment activities are carried out with competence, impartiality, and consistency, fostering confidence in goods, services, and systems.

The following is submitted:

Providing transparent fees, and accreditation bodies ensure predictability for applicants while maintaining fairness and recovering the costs of their services which is key and understood by all parties for body sustainability.

Most accreditation bodies follow standard models such as:

- Fixed fees for specific services (e.g. initial assessment, surveillance audits, scope extension).
- Flat annual fees for maintenance of accreditation.
- Fees based on audit duration or service complexity.

These models are designed to cover the accreditation body's administrative and operational costs, while avoiding conflicts of interest.

The model of accreditation fees based on a percentage of revenues generated for the provision of conformity assessment services is uncommon. Furthermore, International standards for accreditation bodies, such as ISO/IEC 17011 (which governs accreditation bodies), insist on:

- Financial and operational independence: Fees must be transparent, justifiable and not linked to the commercial activity of accredited entities.
- Avoiding conflicts of interest: Fees based on a percentage of revenues could be perceived as a financial incentive and compromise impartiality.

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Finally, this amendment in the business law goes against the recommendations of international standards and could raise ethical and transparency issues. We are therefore asking legislators to stick to the standard fee structure.

It is also our view that the introduction of such accreditation levy against the value of each service offered would contribute to additional costs in an already challenging business environment.

Thank you.

Yours Faithfully,



Douglas Nyamori
REGIONAL MANAGER – GTS EA

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REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
STATE DEPARTMENT FOR INVESTMENT PROMOTION

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28/11/24

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NAIROBI KENYA

REF:MITI/SDIP/PARL. VOL. 2(11)

28th November, 2024

The Office of the Clerk,
The National Assembly,
P.O. Box 41842-00100,
Nairobi

Benjamin Magut
to facilitate
on 29/11/24

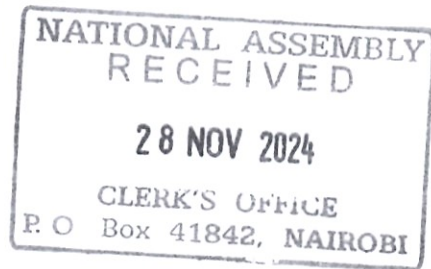
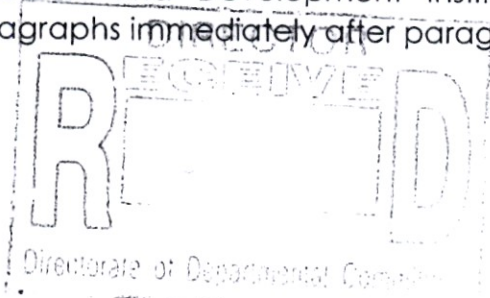
INVITATION TO SUBMIT MEMORANDA ON BUSINESS LAWS (AMENDMENT), BILL, 2024
(NATIONAL ASSEMBLY BILL NO.49 of 2024)

Your letter Ref NA/DDC/TRADE/2024/151 refers.

The Departmental Committee on Trade, Industry, and Cooperatives invited stakeholders to submit written memoranda on the proposed amendment to the Kenya Industrial Research and Development Institute Act (Cap 511) to public hearings on **Wednesday, 27th of November 2024** at the **Bunge Towers, 3rd Floor, Room 18/19**. The **Ministry of Investment Trade and Industry (MITI)**, **Kenya Industrial Property Institute** and **Kenya Industrial Research and Development Institute** appeared before the committee.

The **BUSINESS LAWS (AMENDMENT), BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 49 of 2024)** sponsored by the Leader of the Majority Party seeks to amend section 6 of the Kenya Industrial Research and Development Institute Act (Cap 511) to provide for further functions of the Institute to include buying, selling, or taking patent rights in inventions and undertaking marketing research, and technological and innovative products.

The proposal seeks to amend the provisions of Section 6(2) of the Kenya Industrial Research and Development Institute Act by inserting the following new paragraphs immediately after paragraph (h)-



Mr. Abenigo Hasik
pls bring to the
attention of the
Committee.

(ha) "arrange with any person or entity to buy, sell or take patent rights in an invention, subject to the terms approved by the Board for the purposes of the commercial exploitation of any invention which the Institute deems important for or incidental to the achievement of its objects and performance of its functions..."

Below please find the **joint** memorandum submitted by the team representing the **Ministry, KIPI and KIRDI** on the proposed amendment as advised by the Departmental Committee on Trade, Industry, and Cooperatives.

S/NO	SECTION	ISSUE	PROPOSED AMENDMENT	JUSTIFICATION
1.	Section 37 of the Bill seeks to amend Section 6(2) of the Kenya Industrial Research and Development Institute Act by inserting paragraph (ha) immediately after paragraph (h)	The use of the terms, "arrange with any person" may be construed to mean anyone who is not an industrial property rights holder. Further, the use of the terms "buying or selling" are ambiguous. The use of the word "taking" may amount to compulsory acquisition of rights, which is also provided under the Industrial Property Act.	Facilitate patents, industrial designs and utility models rights holders to commercially exploit any invention or innovation which the Institute deems fit or incidental to the achievement of its objects and performance of its functions, subject to the terms approved by the Board.	There is need to take care of the interests of patents, industrial designs and utility models rights holders so that their rights are not arbitrarily transferred through purchase or selling. The provisions on "taking" need to be limited so that rights of parties are not compulsorily acquired.

Submitted for your consideration.

Patricia Aruwa

Director,
State Department for
Investment Promotion, SDIP

Stephen Ng'eno

Deputy Managing
Director,
KIPI

Michael Cheloti

Kenya Industrial
Development Research
Institute, KIRDI



28th November 2024

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK
P.O. BOX 41842 – 00100
NAIROBI, KENYA

Benjamin Magut

to facilitate

29/11/24

*Doc
28/11*

SGS /NA/ 01 – 24 /ZO

Attention: Peter K. Chemweno

Dear Sir,

REF: THE NATIONAL ASSEMBLY - INVITATION TO SUBMIT MEMORANDA ON BUSINESS LAWS (AMENDMENT) BILL 2024 - (NATIONAL ASSEMBLY BILL NO. 49 OF 2024)

We confirm receipt of your letter with reference **NA/DDC/TRADE/2024/150**, inviting SGS Kenya Limited to submit a memoranda on Business Laws (Amendment) Bill, 2024 National Assembly Bill No, 49 of 2024.

Find attached to this letter our memoranda on the bill for consideration. We thank you for inviting SGS Kenya Limited to participate in this important exercise.

Yours faithfully,
FOR SGS KENYA LIMITED

Ziad Otey

Ziad Otey
Regional Managing Director E.A

Mr. Abenaye Klasike
Pls. bring to the attak of the committee
OK
29/11/24

NATIONAL ASSEMBLY
RECEIVED
28 NOV 2024
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

DIRECTOR
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Directorate of Departmental Committees

FEEDBACK TEMPLATE FORM

REQUEST FOR VIEWS ON THE BUSINESS LAWS (AMENDMENT) BILL, 2024

No	Act e.g. Standards Act	Proposal	Justification
26	10.A Every foreign conformity assessment body that carries out any conformity assessment activity in Kenya shall be accredited by the service	To either expunge or amend by adding.....shall be accredited by the service or any other accreditation body based on mutual recognition agreement	<p>Mutual Recognition Agreements (MRAs) typically allow certification and inspection bodies accredited by one party to be accepted by others without additional requirements. However, if KENAS accreditation standards diverge from international practices, it may create barriers for Kenyan-accredited certifications to be recognized in other countries or regions that are part of MRAs.</p> <p>CABs that hold both KENAS and international accreditations will face additional compliance requirements, financial burdens, and operational challenges due to the proposed amendments to the Kenya Accreditation Service Act. While having a local presence and meeting some Kenyan accreditation standards may offer certain advantages, CABs will still encounter more regulatory obstacles, higher costs, and potential delays in service delivery as a result of these new provisions.</p> <p>The accreditation levy will increase operational expenses, and adjustments to pricing structures and local presence requirements will be necessary. These changes could affect market positioning and intensify competition</p>

27	12A. There is imposed a levy to be known as the accreditation levy which shall be at the rate of three percent of the value of any accredited services offered to a third party by an accredited conformity assessment body		The implementation of a 3% accreditation levy will raise the cost of services for CABs operating in Kenya. For those of us holding both KENAS and global accreditations, this levy will apply to all accredited services provided to third-party clients within Kenya. Previously, we were offering services at competitive rates based on international standards. However, this new levy will increase our operational costs, which we will likely need to pass on to our clients. As a result, the cost of certification testing and inspection services will rise, making them less appealing to price-sensitive clients, especially small and medium-sized businesses, which in turn will reduce marketability of the products produced by the SMEs

Copy to: **Hon. Salim Mvurya, EGH**
Cabinet Secretary
Ministry Investments, Trade and Industry
NAIROBI



Business Laws (Amendment) Bill, 2024

MEMORANDUM

26th November 2024

ABOUT SCEA

The Shippers Council of Eastern Africa is a business membership organization whose mandate is to advocate for an improved policy and trade environment, educate shippers on their rights and obligations in import and export trade, interpret government regulations and procedures, and provide a platform for sharing experiences through networking forums, and training and awareness workshops.

SCEA was formed by five (5) founding members including the Kenya Association of Manufacturers (KAM), Fresh Produce Exporters Association of Kenya (FPEAK), East African Tea Trade Association (EATTA), East Africa Cement Producers Association (EACPA), Kenya Coffee Traders Association (KCTA) and the Petroleum Institute of East Africa (PIEA).

SCEA is established under the laws of the Republic of Kenya with the following mandate:

- Provide a platform for cargo owners to articulate their concerns to government and logistics service providers in a unified voice.
- Provide timely interventions in operational issues that face members.
- To influence development of policies, legislation, and regulatory frameworks to support greater logistics efficiency and an enabling business environment through evidence-based research.
- Promote and disseminate best practices in transport, logistics and trade facilitation.
- Empower members by sharing industry information that will grow their businesses.

Business Laws (Amendment) Bill, 2024

The Bill seeks to amend Section 11 of the National Electronic Single Window System Act (CAP 485D). It grants the Cabinet Secretary (CS) the authority to exempt specific categories of users from paying fees prescribed under the Act.

SCEA's Position

The National Electronic Single Window System (NESWS) plays a critical role in facilitating international trade by integrating documentation processes and reducing cargo clearance

time. The proposed amendment aligns with SCEA's advocacy for policies that foster trade facilitation, competitiveness and economic growth.

The proposal to grant the CS discretionary power is a positive step toward addressing cost-related barriers to trade. The exemptions can enhance economic efficiency and competitiveness. These we support.

In granting the CS the discretionary powers it is very important that **Supportive and prescriptive regulations are in place to ensure the exemptions effectively stimulate economic growth while addressing the needs of the business community.**

The regulations so established should present clarity on the objective, timelines and terms and conditions and should be aimed at reducing the financial burden on the importers and exporters and thus resulting to competitiveness of our entrepreneurs local, regionally and in the international market.

The introductions of the various fees and charges for use of the Single window has raised serious concerns hence the decision to grant the CS the discretionary power is in the right directions. Priority should be on exports of our Tea, fresh produce, flowers, vegetables, spices, beef etc. Other products should be on imported raw materials, packaging materials, equipment and machineries. Exemptions should also include humanitarian organizations such as the World Food Programme (WFP), Red Cross and Exporters and other stakeholders contributing significantly to the economy, amongst Others.

Conclusion

SCEA supports the amendment to grant the Cabinet Secretary discretionary power to exempt certain users from NESWS fees, to balance trade facilitation with revenue generation. Regulations need to be in place to ensure the exemptions support economic growth.

For Shippers Council of Eastern Africa



Agayo Ogambi

Chief Executive Officer

ceo@shipperscouncilea.org

THIRTEENTH PARLIAMENT – (THIRD SESSION)
IN THE MATTER OF CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2024

Section A — Object of the Bill

The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024) is a Bill sponsored by the Leader of the Majority Party which seeks to amend the National Electronic Single Window System Act (Cap. 485D); Banking Act (Cap. 488); Central Bank of Kenya Act (Cap. 491); Microfinance Act (Cap. 493C); Standards Act (Cap. 496); Kenya Accreditation Service Act (Cap. 496A); Scrap Metal Act (Cap. 503); Kenya Industrial Research and Development Institute Act (Cap. 511); and Special Economic Zones Act (Cap. 517A).

Section B—Personal Information

Name:	Wamaitha Githinji
Gender:	
Constituency:	Langata
County:	Nairobi
Identification No. (National ID/Passport/Kenyan Driving Licence):	

Section C—Views on Bill

S/No.	Clause	Proposal	Justification
1.	27	- Delete clause and don't charge introduce a new levy	<ul style="list-style-type: none"> - This further increases the cost of doing business in Kenya leading to making Kenya an EVEN MORE unattractive place to do business. Organisations are leaving, more people are becoming unemployed and Kenyans becoming poorer. - Parliament should enact laws with measures to reduce unemployment, increase opportunities for organisations to do business in Kenya instead of enacting laws that are leading to organisations leaving and making Kenyans unemployed and poor.
2.	28	- Don't establish a scrap metal council	<ul style="list-style-type: none"> - Clause is taking away the role of the organisations such as Kenya Bureau of Standards. Instead of establishing a Council improve service provision at organisations such as Kenya Bureau of Standards. - The council adds more bureaucracy to doing business in Kenya making it a more unattractive to do business. - The establishment of this council will result in more costs to us as taxpayers when it is very clear that there is a bloated and unsustainable public service wage bill.