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THE 12TH PARLIAMENT- SECOND SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT OF THE 41ST INTERNATIONAL ASSOCIATION OF COMMERCIAL
ADMINISTRATORS (IACA) CONFERENCE

HELD IN

CHARLOTTE, NORTH CAROLINA

6TH-10TH MAY, 2018

The National Assembly,
Parliament Buildings,
NAIROBI


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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Attorney General
BFF	Business Form Finder
MSMES	Micro, Small and Medium Enterprises
MPSR	Movable Property Security Rights
BRS	Business Registration Service
IACA	International Association of Commercial Administrators
LLP	Limited Liability Partnership
NASCA	National Association of State Corporation Administrators
NFIB	National Federation of Independent Business
PIN	Personal Information Number
VAT	Value Added Tax
UCC	Uniform Commercial Code
UNICITRAL	United Nations Commission on International Trade Law
USA	United States of America

CHAIRPERSON'S FOREWORD

The International Association of Commercial Administrators (IACA) is a professional association for government administrators of business organization and secured transaction record systems in jurisdictions which develop efficient business systems. IACA was incorporated in Louisiana, United States of America in 1978. Initially the Association's name was the National Association of the State Corporation Administrators (NASCA) and comprised only the Corporation directors in the United States of America.

The main objective for the establishment of IACA was to provide primary educational and information resource for its members and to be the principle instrument for positive change in the environment in which its members operate. IACA is dedicated to the education of and exchange of ideas among its members at annual general meetings, conferences and through newsletters circulated to members throughout the year. The Association lays a lot of emphasis on efficiency and effectiveness in service provision in the government sector at the lowest cost possible.

IACA's 41st annual conference was held from 6th to 10th May 2018 in Charlotte city in the State of North Carolina. The conference's theme was "Flying into the future". The Conference was attended by several local and international jurisdictions most notably; Arizona, Nevada, Colorado, Georgia, District of Columbia, Iowa, Germany, Ghana, Quebec, Slovenia, Nigeria and Kenya.

The Kenyan delegation comprised National Assembly Members of Parliament drawn from the Departmental Committee on Justice and Legal Affairs, Select Committee on Delegated Legislation and the Constitutional Implementation Oversight Committee (CIOC). The Justice and Legal Affairs Committee's delegation comprised-

- (i) Hon. George Gitonga Murugara, M.P. - Leader of delegation
- (ii) Hon. William Kamoti Mwamkale, M.P.

- (iii) Hon. Jennifer Shamalla, M.P.
- (iv) Hon. Japheth K. Mutai, M.P.

Mr. George Gazemba, Principal Clerk Assistant served as the delegation's secretary. The delegation departed Nairobi for Charlotte on 4th May, 2018 via Paris, France and Detroit, USA and returned on 12th May, 2018.

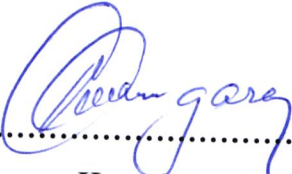
The conference offered the Committee an opportunity to attend and learn from the various events, workshops and meetings on emerging issues in business registration systems. The Committee attended various sessions including: project management, credit card fraud and change backs, Microsoft security solutions for the modern enterprise, the International Business Registration Report, the annual report of jurisdictions presentations and jurisdictional show case amongst others;

The delegation had an opportunity to learn and interact with the various business management models used by various jurisdictions to facilitate registration, data collection and storage of business records; brainstorm on the benefits of applying technology to facilitate efficient business registration to all stakeholders including government departments; network and exchange of ideas with other participants; and engage with numerous vendors who has showcased their various business registration products and systems;

As the Leader of Delegation, I take this opportunity to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. I also wish to commend the Members of the delegation who showed great commitment to duty throughout the duration of the conference.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it's my privilege and duty to present to the House for

noting a report of the Committee on the attendance to the IACA Conference held from 6th to 10th May, 2018 in Charlotte, North Carolina, United States of America.

Signed..........Date.....21.03.2019.....

Hon. George Gitonga Murugara, M.P.

Leader of Delegation

EXECUTIVE SUMMARY

This Report is a culmination of the various workshops, and plenary sessions attended by a delegation from the Departmental Committee on Justice and Legal Affairs to the 41st Annual Meeting of the International Association of Commercial Administrators (IACA) held in Charlotte, North Carolina in the USA from 6th to 10th May, 2018 at the Hilton Charlotte University Place.

The International Association of Commercial Administrators (IACA) is a professional association for government administrators of business organization and secured transaction record systems at the state, provincial, territorial, and national level in any jurisdiction which seeks to develop business systems.

This report is made up of five (5) chapters each covering the deliberations, different topics of discussion as well as resolutions resulting from the meeting.

The report details the following –

- a) Background information on the International Association of Commercial Administrators (IACA) and the 41st Annual Meeting;
- b) Rationale for the Committee's participation at the 41st Annual Meeting;
- c) Presentations and deliberations at the Meeting;
- d) Business Registration in Kenya; and
- e) Resolutions and Way forward.

The delegation following its participation at the International Association of Commercial Administrators (IACA) 41st Annual Meeting resolved as follows;

- (a) The 41st IACA Annual Meeting was an opportunity for capacity building for the delegation on matters relating to business registration as well as benchmarking from other nations, network and engage with practitioners from around the world. The

delegation resolved to attend future IACA Annual Meetings for the aforementioned reasons.

- (b) Kenya is in a strategic position both geographically and economically and this should be used to attract more strategic investments and reducing the time and cost for doing business. The delegation resolved to work closely with BRS (in full) to facilitate the scrutiny of relevant regulatory framework that simplify business registration in Kenya.
- (c) The delegation also regrettably noted the absence of Kenya's Executive particularly the BPS (in full) at the 41st IACA Annual Meeting. The workshops and deliberations therein would have been greatly beneficial to the BRS and the Office of the Attorney General.
- (d) The delegation shall support the office of the Attorney General and the BRS to scrutinize all relevant regulations that support the registration of businesses and seek to interact with all arms of government to ensure that the cost and time taken to do business is reduced, there is greater efficiency and that care be taken to effectively deal with any eventualities and challenges that may slow down the modernization processes.

CHAPTER 1

1.0 BACKGROUND

1.1 Mandate

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

- (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- (c) *study and review all legislation referred to it;*
- (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) *investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- (f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- (g) *examine treaties, agreements and conventions;*

- (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) *examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;
- (b) The administration of law and Justice
- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

1.1.1. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	–	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		

Hon. William Kamoti Mwamkale, M.P.
Hon. Ben Orori Momanyi, M.P.
Hon. Peter Opondo Kaluma, M.P.
Hon. Zuleikha Hassan, M.P.
Hon. Jennifer Shamalla, M.P.
Hon. Beatrice Adagala, M.P.
Hon. Gladys Boss Shollei, CBS, M.P.
Hon. John Munene Wambugu, M.P.
Hon. George Gitonga Murugara, M.P.
Hon. Anthony Githiaka Kiai, M.P.
Hon. John Kiarie Waweru, M.P.
Hon. Japheth Mutai, M.P.
Hon. Adan Haji Yussuf, M.P.

1.2. Committee Secretariat

Mr. George Gazemba -	Principal Clerk Assistant II
Ms. Doreen Karani -	Legal Counsel I
Ms. Halima Hussein -	Clerk Assistant III
Ms. Fiona Musili -	Research Officer III
Mr. Omar Abdirahim -	Fiscal Analyst III
Mr. James Macharia -	Media Liaison Officer
Ms. Roselyn Ndegi -	Serjeant-at-Arms
Mr. Hakeem Kimiti -	Media Liaison Officer

1.3 Rationale of the Committee's participation at the 41st IACA Annual Meeting

4. The Committee's reasons for attending the conference were-

- (i) To learn from the various events, workshops and meetings addressing various key issues related to business registration. The topics included project management, credit card fraud and charge backs, Microsoft security solutions for the modern

enterprise, the International Business Registration Report, the annual report of jurisdictions presentations and jurisdictional show case amongst others;

(ii) To learn and interact with the various business management models used by various jurisdictions to facilitate registration, data collection and storage of business records;

(iii) To brainstorm on the benefits of applying technology to facilitate efficient business registration to all stakeholders including government departments;

(iv) To network and exchange ideas with other participants; and

(v) To engage with numerous vendors who has showcased their various business registration products and systems.

1.4 Expected outcomes from the conference

5. The expected outcomes from the conference were as follows-

(i) Capacity building for the Committee's Members in the area of business registration systems and reducing the cost and time for business registration;

(ii) Effective sharing of knowledge and networking with other global participants

(iii) Collaboration between IACA and the Board for future engagements and capacity building

CHAPTER 2

2.0. ABOUT THE INTERNATIONAL ASSOCIATION OF COMMERCIAL ADMINISTRATORS (IACA)

2.1. IACA and its mission

6. The International Association of Commercial Administrators (IACA) is a professional association for government administrators of business organization and secured transaction record systems at the state, provincial, territorial, and national level in any jurisdiction which has or anticipates development of such systems.

7. IACA is dedicated to the education of and exchange of ideas among its members at annual general meetings and through newsletters throughout the year. Emphasis is placed on greater efficiency in government and in providing superior service at the least possible cost.

8. In 1991, IACA also began to participate in external activities which affect filing office functions and interests. In 1994, IACA adopted an operational plan to take proactive steps to influence its legal and technological environments to improve performance of its members' offices.

9. In summary, IACA has been and remains the primary educational and information resource for its members. It has now become the principle instrument for positive change in the environments in which its members operate and seeks to extend that effort to all interested jurisdictions.

2.2 History of IACA

10. IACA was organized and incorporated in Louisiana, United States of America in 1978. Initially, the name of the organization was the National Association of State Corporation Administrators (NASCA) and included only the corporation directors of the United States.

11. In 1980, the scope of the organization was extended to include the Uniform Commercial Code (UCC) directors. At that time, the name of the organization was changed to the International Association of Corporation Administrators to reflect the inclusion of international members from Canada, Great Britain and affiliate relationships with Australia and Trust Territories jurisdictions.
12. In 1993, the scope of the organization was again expanded to provide membership to the information technology managers who support the Corporation and UCC functions in each jurisdiction.
13. In 1994, the existing standing committee structure was replaced by three functional sections with open membership to; Business Organization Section, Secured Transactions Section and Information Technology Section. In 1986, the International Relations Section was created.
14. In 2002, the articles of incorporation were restated changing the name to the International Association of Commercial Administrators (IACA) and allowing international participants to become associate members.
15. In 2006, articles of incorporation and by-laws were amended in order to-
 - (i) Eliminate the right to vote by proxy on all matters except where the action would adversely affect a member's interest;
 - (ii) Authorize associate (international) members to vote on matters before the International Relations Section;
 - (iii) Change the reference from the Executive Board to Board of Directors;
 - (iv) Eliminate the right to notice of the annual meeting;
 - (v) (v) Increase the board of directors by four (4) to include the section chairs; and

(vi) Add a Committee on Corporate Governance.

16. In 2013, the by-laws were amended to allow for international jurisdictions (outside U.S. or Canada) to become members.

2.3. IACA's Board of Directors and membership

17. As at the time of the conference, IACA comprised a board of directors as follows-

No	NAME	STATE	POSITION
1.	Cheri Myers	North Carolina	President
2.	Rebecca Longfellow	Indiana	First Vice President
3.	Josef Gasminov	District of Columbia	Second Vice President
4	Tanya M. Gibson	Arizona	Secretary
5	Mike Powell	Texas	Treasurer
6	April Wright	Delaware	First Alternate
7	Marissa Soto-Ortiz	Massachusetts	Second Alternate

18. IACA comprises two classes of membership namely; general and international.

(i) General Membership

19. One is eligible for IACA general membership if the following apply-

- (a) He/she a U.S. or Canadian government agency employee; and
- (b) His/her agency has administrative or policy authority for, or provides information technology support to, business entity divisions or departments and/or Uniform Commercial Code divisions or departments.

(ii) International Membership

20. One is eligible for IACA international membership if the following apply-

- (a) He or she is from a jurisdiction representing foreign governmental agencies outside of the U.S. or Canada; and
 - (b) His/her agency has administrative or policy authority for, or provides information technology support to, business entity divisions or departments, and/or those agency divisions or departments that handle matters contained in or similar to, the Uniform Commercial Code.
21. IACA's International Relations Section assists international delegates learn about the organization and provide information on attending conferences. Annual membership dues are \$300 (U.S. Dollars) per member for U.S. and Canadian government administrators and \$250 (U.S. Dollars) per member for jurisdictions of government agencies outside the U.S. and Canada.

2.4 Sections within the Association

22. The Association has four (4) sections or departments overseeing its operations as follows-
- (i) Business Organization Section
 - (ii) Information Technology Section
 - (iii) International Relations Section
 - (iv) Secured Transactions Section.

CHAPTER 3:

3.0 THE 41st INTERNATIONAL ASSOCIATION OF COMMERCIAL ADMINISTRATORS (IACA) ANNUAL CONFERENCE PROCEEDINGS

23. The conference was held from 6th to 10th May, 2018 at the Hilton Charlotte University Place Hotel and was attended by the following jurisdictions – Australia, Arizona, Colorado, Columbia, Connecticut, Delaware, District of Columbia, Georgia, Germany, Ghana, Hawaii, Indiana, Iowa, Kansas, Kentucky, Kenya, Louisiana, Macedonia, Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, Nigeria, North Carolina, Nova Scotia, Ohio, Ontario, Pennsylvania, Quebec, Rhode Island, Slovenia. South Carolina, South Dakota, Spain, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Zambia.
24. Several Companies and institutions partnered with the IACA I the successful organization of the conference. These were mostly American and included Capitol Services, Cogency Global Inc, Corporation Service Company, CT Corporation, DMI, Dun & Bradstreet, ERS/ISC, First American Title – UCC Division, First Corporation Solutions, Foster Moore – The Registry People, GLEIF – Global Legal Entity Identifier Foundation, IncCorp Services, Inc, John Deere, National Public Records Research Association (NPRRA), Netfor Inc, Parasse, PCC Technology Inc/GCR Incorporated, Skadden Arps Slate Meagher & Flom LLP, Southland, Sutherland Government Solutions, Tequity and Ubisecure Oy.
25. The Conference presentations were as follows-

3.1 Roll call of Jurisdictions

26. During the session, jurisdictions were given the opportunity to make remarks on-
 - (a) Biggest accomplishment in the recent time;
 - (b) Most significant challenge of the last year; and
 - (c) Top priority for the year

(a) Australia

27. It has fully digitized the Attorney General's department and the Australian Financial Security Authority. It has 9.7 million current registrations with 2.1 new registrations having been recorded in 2017. Their digitization process was based on a human centered design that was made to suit their needs and it included a balancing act of legislation and technology shaping each other.

(b) Germany

28. Its business Registrar system is used in 16 states and in 116 courts. The process commenced in 1997 and became fully operational in 2014. The system has experienced a few challenges including the implementation of varying regulatory frameworks and Information Technology (IT) infrastructures in the 16 states. This digitization process has been used in the business and land registries.

(c) Kansas

29. It has implemented a one-stop application designed to help both new entrepreneurs and existing business owners easily find forms and online services they need to comply with state agency requirements for registering, operating, and closing a business in Kansas. This application has improved compliance, the integrity of a public record and is more effective.

(d) British Columbia

30. It launched new Society's Act and moved filings from paper to electronic with 1100 entities transitioned from paper to electronic

(e) **Canada**

31. Launched a new search system that allows users to see if names are available and can be used in Canada. It developed new web interface and new back end host vendor with multi-jurisdictional access for registries. It provides a single nationwide view of information. A new online copy service was launched in 2017.

(f) **Colorado**

32. It introduced a new Notary Law with remote notarization. However, the National Federation of Independent Business (NFIB) has sued Colorado because they are concerned about how the fees generated are used.

(g) **Kenya**

33. It implemented the reforms introduced in the new Companies Act, 2015 and the Insolvency Act, 2015. Implementation was effected through enactment of enabling statutory instruments and the application of the digital platform in the registration of companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy and insolvency, hire purchase and security rights.

3.2 Pillars of Distinction and Merit Award

34. Each year, IACA encourages member jurisdictions who believe they have developed innovation through the implementation of a new or improved product or service to share their innovation. A select panel of experts carefully reviewed each submission and assigned a score in the areas of Effectiveness, Originality, Significance and Transferability, and Lessons Learned.

The following member jurisdictions were judged highest overall:

(a) **Kansas Business Form Finder**

35. The Business Form Finder (BFF) is a one-stop application designed to help both new entrepreneurs and existing business owners easily find forms and online services they need to comply with state agency requirements for registering, operating, and closing a business in Kansas. Users visiting the website use a set of filters to locate the forms and services unique to their needs by narrowing results to the type of business they are interested in. It has a supporting page with more information about fees, regulations and requirements, and other documentation including instructions and manuals, or even videos about the process is provided. To make keeping information current for State agencies as easy and productive as possible, Business Form Finder includes an online administrative interface that enables state agencies to populate information about their agency, forms, services and associate them with the appropriate categories and maintain these listings on an ongoing basis without requiring any intervention from central or technical staff.

(b) Michigan on the Move

36. Michigan on the Move implemented a File Online for Reports and Statements through the automatic creation and delivery of certificates of good standing for businesses, the automatic approval of annual reports & statements online submission of Limited Liability Corporations, restorations to good standing technical and administrative functionality.

(c) South Carolina: Business Entities Online Presentation

37. This award was presented to the South Carolina Secretary of State for their distinction in making sure that the business entities are efficiently filed, searched and retrieved electronically. They provided a web-based application to file all business entity filings online, search and receive certified documents online via email. The system was launched January 17, 2017 and the adoption Rate between January and April 2017 was 52.1% and in January to April 2018 it increased to 64.3%. The office recorded a total of 77,065 Online Filings.

3.3 World Bank Presentation on Business Registration Systems

38. The World Bank supports reforms focusing on reducing time and cost to start a business. More economies have implemented regulatory reforms and governments have set up business registries that have a complete, up to date, transparent and accessible repository of data on businesses. An efficient system provides fewer steps, reduced time and lower costs for businesses through establishment of an effective, sustainable and cost-effective institutional framework, establishment of a complete, up to date and centralized repository of data on businesses operating in the country that is transparent and accessible to the public with national coverage. The business registration services should be efficient and accessible throughout the country with efficient mechanisms to update the data on registered businesses and the ability of the business registry to exchange data with other stakeholder agencies.
39. A complete, transparent, accurate and automated business registry provides the government with the tools to produce business statistics and design policies, provide market participants the information they need to value their risks in investing and is a critical ingredient in the production of reliable economic statistics.
40. The business register is the sole medium of observation of firm entry and firm exit and it captures a snap shot of the distribution of firms across industries and locations at each point in time, a comparison of the snap shots between any two points giving flows of entries and of exits in the interval. It also captures inter-industry and spatial pattern entry and exit and the associated processes of job creation and job destruction and is a source of key macroeconomic indicators including per capita GDP and national saving and investment rates.
41. On challenges, the World Bank noted that many countries do not have reliable business registers, the registers are outdated, too limited in the range of activities or sectors they

cover, are not as accessible to the public as they should be, focus mainly on business entry reforms and not the systemic and sustainable reforms, limited use of business registers data by government in policy making, lack of focus on the quality of data on businesses and lack of transparent or inaccessible registers.

42. To address these challenges, the World Bank is seeking to build capacity in maintaining reliable and comprehensive business registers, facilitate the registers to feed into better census and sample survey data, increase the accessibility of economic statistics to businesses, map out of all relevant registration and data collection agencies, establish a protocol of cooperation and information exchange between them, standardize the contents of the registration, institute specific mechanisms for automatic updating of the business register and bring the business registration process online.
43. The World Bank recommends that business registries should improve interoperability and exchange of data between relevant stakeholder agencies, increase accessibility of survey returns to the public, business, research institutions and think tanks, support the periodic release of survey data and accompanying thematic reports analyzing the survey results on narrowly defined topics relating to two basic themes including inter-industry and intra-industry structure of jobs and earnings and of job growth and earnings dynamics; business formation, business exit and business growth rates across sectoral and inter-industry divides and against global and international benchmarks.

3.4 Project Management for the Non-Project Manager

44. The presentation focused on the much interchangeable used terms “project management” and “program management.” Project management is temporary with a defined time frame, is specific to a product or service or result with some dedicated result and end time. Programme management on the other hand entails ongoing business operations that are continuous in nature and that meet an ongoing business, product or service with dedicated resources.

45. Projects meet new needs or demands, seek to solve problems, improve performance, create something new or they add value. A project manager therefore is required to manage the project scope (includes justification, purpose, objectives, deliverables and statement of work), project resources (includes budget, people, teams, infrastructure, equipment and time) and the project schedule (start/end, deadlines, milestones, critical path activities, dependencies) by understanding the environment, the threats or risks and opportunities (internal, external, economic, social, political). The presentation highlighted the fact that project managers play the following roles:

- (a) Interpersonal;
- (b) Informational
- (c) Analytical;
- (d) Decisional; and
- (e) Reflective.

46. The presentation concluded by highlighting that a project manager should be an open person who asks questions and seeks to do what needs to be done cautiously and flexibly. A project manager further views people as resources, communicates and acknowledges and celebrates success.

3.5 Credit Card Fraud and Charge Backs

47. Credit cards are convenient for customers, have a verification processing method, are flexible in terms of handling the fee changes and voids and refunds may be handled by the relevant Finance group. The presentation sought to sensitize participants on the benefits and challenges of credit cards and how to avoid chargebacks. Where the possibility of a chargeback occurs, one is advised not to panic but that they should gather their relevant documents and respond timely to any relevant queries and wait for the matter to be resolved.

3.6 Microsoft security solutions for the modern enterprise

48. The presentation sought to sensitize participants of the existence of threats in the midst of the best security solutions. The current security defenses are no longer sufficient as there is a well-resourced, profit motivated human intelligence that waits on the other side to use government transparency against itself. These attacks include account access, financial access, nuisance and identity theft are a material risk to any business and they constitute cyber threats. While appreciating that passwords are crucial to reducing cybercrime, the presentation noted that passwords:

- (a) Are hard for humans to remember especially the alpha numeric ones;
- (b) Credential reuse across multiple services increases attack surfaces;
- (c) Even the strongest passwords are easily phishable;

49. Windows has therefore introduced a device-based multi-factor with biometrics modalities that offers improved security, fingerprint and facial recognition, is easy to use and impossible to forget.

3.7 The future on the German Business Register

50. German has two business registration systems namely RegisStar and Aureg operational in all sixteen (16) states in the country linked to one hundred sixteen (116) court stations. The Systems were founded in 1997, test run in 1999 and implemented in 2003. The Systems were first implemented in North Rhine – Westfalia before being rolled out in the whole country in 2007.

51. The main challenge facing the Business Register System in Germany is the inability to modernize the system within a local court system with differing regulatory frameworks in varying IT-Infrastructures for all the sixteen (16) Germany states. The other challenge facing the System is the inability to build software components in cooperation with the German Land Registry on account of the following-

- (a) User authorization administration;
- (b) Person administration;
- (c) Document generation;
- (d) Logging;
- (e) Administration of dates and deadlines;
- (f) Cost and fee processing; and

(g) Allocation of duties administration.

52. To address the situation, the following are being done-

- (a) Ensuring that there are multiple evolving system platforms and evolving neighbouring systems;
- (b) Ensuring parallel operation of migrated and legacy registers;
- (c) Ensuring constant evolving registers.

3.8 South Carolina – Business Entities Online

53. The system enables one to file, search and retrieve documents electronically. The system was launched on 17th January, 2017 and replaced the in-house filing system and provided a web-based application to file all business entity filings online.

54. The system recorded an adoption rate of 52% by 30th April, 2017 and 64.3% by 31st April, 2018. The total online filings as at 31st April, 2017 were 77,065. The system comprises two hundred thirty-eight (238) unique forms including mergers all available to be filed online.

55. Through the system, one can transact the following-

- (a) Bulk filings
- (b) Processing of more than 200 files per day per person;
- (c) Web based application; and
- (d) Mobile accessibility.

56. The system is operational twenty-four (24) hours per day, does not charge expediting fees and online filings are processed within 24-28 hours. The system is being developed to realize the following-

- (a) Document and certificate request functionality;
- (b) Dashboard of charts and application statistics;
- (c) Subscriber accounts; and
- (d) Administration tools for adding and editing all in house forms.



41st Annual IACA Conference
Charlotte Motor Speedway
Charlotte, North Carolina
May 8, 2018

CHAPTER FOUR

BUSINESS REGISTRATION IN KENYA

57. The Companies Act 2015 is the primary legislation that deals with registering companies in Kenya. A number of the processes involved in the registration and running a company in Kenya have been simplified. The Companies (General) Regulations introduced new documents/forms to be used in the registration of companies and the inclusion of additional information and filing of returns.
58. However, the registration of Business Names and Limited Partnerships is determined by separate legislation, being the Registration of Business Names Act (Cap 499) and the Limited Liability Partnerships Act. Business names may also be registered online. During the registration of a company or business name the registration of with the Revenue Department for a Personal Identification Number (PIN) and VAT registration VAT registration;
59. The Office of the Attorney General introduced the Business Registration Service (BRS) established under the Business Registration Service Act, 2015 as a semi-autonomous body in the Office of the Attorney General and Department of Justice to implement policies, laws and other matters relating to the registration of companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy and insolvency, hire purchase and security rights. The BRS is further responsible for formulation and implementation of policies and laws regarding registration of societies, hire purchase, trade unions, chattels transfers, adoptions, coat of arms, books and newspapers, the flag and emblems and names. The service is responsible for streamlining the registration and it provides clarity in the eyes of the service users as to the steps and time it takes to undertake any registration process.
60. Previously most investors lamented about the time and cost it took to register an entity. There was no clear time span by which incorporation would be completed and the certificate handed over. There were many bureaucratic steps, with many offices involved. The Business Registration Service seeks to reach global standards in registration and incorporation. In Kenya like in many other countries, name searches and incorporation can now be done online, cutting costs and time spent.
61. The Business Registration Service is mandated to perform the following functions including:
- (i) carrying out all registrations required under the Business Registration Act, 2015;

- (ii) maintaining registers, data, and records on registrations carried out by the Service;
- (iii) implementing relevant policies and guidelines and provide the Attorney General with the necessary information to guide the formulation of policy and amendment of existing policy and guidelines;
- (iv) carrying out research and disseminate research findings in the fields covered by the relevant laws through seminars, workshops, publications or other means and to recommend to the Government any improvements in the relevant laws; and
- (v) collaborating with other state agencies for the effective discharge of its functions; charge fees for any service performed by the Service.

62. Kenya improved 12 places, in the latest ease of doing business ranking, from position 92 in 2016 to position 80 in the 2017 ease of doing business index that surveyed 190 economies. In the survey Kenya was the third most competitive economy in Africa after Mauritius (25th) and Rwanda (41st). These changes in ranking are partly attributed to reforms that have been undertaken in business laws and registration processes.

3.6. Legislative Reforms in Business Laws and Registration

a. Companies Act, 2015

- i. The Companies Act, 2015 brought transformation in the registration process by allowing the adoption of electronic platforms to streamline the process, a shift from manual registration and submission of documents to an online registration system on the e-citizen platform. It is now possible for one to register business names, companies, and partnerships and make changes through the online platform. Status Reports of companies may be accessed through the online platform including the filling of returns as well as cessation of business.

- ii. To implement the Companies Act, 2015 the Office of the Attorney-General published the Companies (General) (Amendment) Regulations, 2017, the Registrar of Companies (Companies Forms) (Amendment) Rules, 2017 and the enactment Companies (Amendments) Act, 2017. The BRS is designing a stakeholder engagement framework to ensure public participation and continuous engagement with key users of these pieces of legislation.

b. The Movable Property Security Rights (MPSR) Act, 2017

(i) The Movable Property Security Rights Act, No. 13 of 2017 published in the Kenya Gazette on 24th May 2017. It created the electronic collateral registry on the e-Citizen portal and it has been operational since 25th May, 2017.

(ii) The main objective of the reform is in line with the spirit of the Ease of Doing Business to increase access to credit to firms especially micro, small and medium enterprises (MSMEs) by developing the appropriate legal and institutional frameworks to allow and facilitate the use of movable assets as collateral for loans. A diagnostic study showed that the previous legal frameworks that governed interests in different securities were fragmented, out of date and cumbersome to use by both lenders and borrowers.

(iii) The MPSR Regulations provide for the proper conduct of the business of the collateral Registry. The regulations create the electronic registry that is aimed at enhancing the confidence of lending institutions and create an enabling environment to lend against movable assets as collateral or security.

a. The Insolvency Act, 2015

- (i) The new Insolvency Act 2015 seeks to redeem insolvent companies through administration (work out). It focuses more on assisting insolvent natural persons, unincorporated entities and insolvent corporate bodies whose financial position is redeemable, so that they may continue to

operate as a going concern and meet their financial obligations to the satisfaction of their creditors.

- (ii) It regulates Insolvency Practitioners, being individuals who are appointed to administrate, liquidate an individual or company that is insolvent. The appointment can be done by the court, creditors, directors or the Official Receiver depending on the circumstances of each case.
- (iii) The Act allows members of two professional bodies' that is, ICPAK and LSK to be the licensed Insolvency Practitioners through an application to the Official Receiver to handle bankruptcy and winding up matters.
- (iv) The Insolvency Act 2015 further introduces the concept of cross border insolvency; which allows for administration/liquidation of multi-enterprise groups across various jurisdictions. Kenya is a member of the United Nations Commission on International Trade Law (UNCITRAL) working group V (Insolvency) working group and is currently developing regulations on cross-border insolvency for domestication in Kenya.

3.7. Process Reform at BRS

(i) Digitalization and Automation

- (a) The BRS resolved to move some of its services to the e-Citizen platform in line with the government policy of spreading outreach of service to the public on a digital platform to improve on efficiencies for the Ease of Doing Business Reforms.
- (b) All new registrations of companies, business names and limited liability partnerships are done online. The electronic platform enables members of the public to make their applications online thus removing the need to physically present themselves at the BRS facilities or Huduma Centers in effect reducing the number of steps taken when registering a business entity.
- (c) This has improved the ease of doing business ranking for the country with the BRS undertaking company registrations within a 48-hour time period.

- (d) Payment for the above services has also been moved to the Government Digital Payments system that affords a transparent and secure mode of revenue collection. This step has indeed seen a steady rise in revenue collection due to stemming of revenue leaks and an improvement in the processing of applications.

(ii) Data Clean-Up in the Companies Registry

- a. Due to the aforementioned transformation of the Companies Act, the Service has introduced a process known as “*link a business*” as part of a records clean-up exercise and an audit trail. This will help eliminate the issue of missing files and reflection of wrong information to the Registry.
- b. The application is a free service done by the proprietor of a business, a director of a company or the company secretary and it has made the process of obtaining the “CR 12” easier.
- c. What “link a business” does for an individual who has already registered a business entity is to make sure his/her records are already up to date, enable easier access to the Registry and ensure that their records are protected against double registration, or fraudulent activities.
- d. Link a business is contained on the e-citizen platform which provides access to government services to the *mwananchi* on an online platform. To link a business, all one has to do is open an account on the e-citizen portal. Once the account is opened, the user should click on the link a business portal and follow the instructions on the page. Link a business can be done anywhere there is access to the internet.

(iii) Development of a Functional and Technically Sound Collateral Registry

- (a) The Electronic Collateral Registry is now a fully developed and functional registry that runs on the government’s service single sign-on platform of e-Citizen. To date, the registry has over 20,000 Initial Notices which have been lodged by various lenders with secured credit amounts running into billions of shillings. This is a

positive indicator of improving access to credit in the economy which in turn improves the ease of doing business.

- (b) BRS has made concerted efforts to reach out to the key stakeholders in the MPSR ecosystem, primarily the Kenya Bankers Association, the Law Society of Kenya, Leasing Association of Kenya, the Institute of Certified Public Secretaries and as well the formal and informal lenders to micro and small enterprises.
- (c) BRS conducted individualized training on the use of the electronic registry to specific banks and it has also developed an MPSR user manual for Stakeholders consultations.

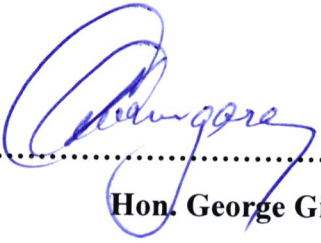
Who made the presentation?

CHAPTER FIVE

5.0 RESOLUTIONS & WAY FORWARD

- I. The 41st IACA Annual Meeting was an opportunity for capacity building for the delegation on matters relating to business registration as well as benchmarking from other nations, network and engage with practitioners from around the world. The delegation resolved to attend future IACA Annual Meetings for the aforementioned reasons.
- II. Kenya is in a strategic position both geographically and economically and this should be used to attract more strategic investments and reducing the time and cost for doing business. The delegation resolved to work closely with BRS to facilitate the scrutiny of relevant regulatory framework that simplify business registration in Kenya.
- III. The delegation also regrettably noted the absence of Kenya's Executive particularly the BPS at the 41st IACA Annual Meeting. The workshops and deliberations therein would have been greatly beneficial to the BRS and the Office of the Attorney General.
- IV. The delegation shall support the office of the Attorney General and the BRS to scrutinize all relevant regulations that support the registration of businesses and seek to interact with all arms of government to ensure that the cost and time taken to do business is reduced, there is

greater efficiency and that care be taken to effectively deal with any eventualities and challenges that may slow down the modernization processes.

Signed..........Date.....*21-03-2019*.....

Hon. George Gitonga Murugara, M.P.

Leader of Delegation

MINUTES OF THE ONE HUNDRED AND SIXTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 21ST MARCH, 2019 AT 10.30 A.M. IN SHIMBA HALL, PRIDE-INN PARADISE HOTEL, MOMBASA

PRESENT-

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. John Olago Aluoch, M.P.
3. Hon. William K. Mwamkale, M.P.
4. Hon. Peter Kaluma, M.P.
5. Hon. Charles Gimose, M.P.
6. Hon. George G. Murugara, M.P.
7. Hon. Adan Haji Yussuf, M.P.
8. Hon. Anthony G. Kiai, M.P.
9. Hon. John Kiarie Waweru, M.P.
10. Hon. Jennifer Shamalla, M.P.

ABSENT WITH APOLOGIES

1. Hon. Alice Muthoni Wahome, M.P. - **Vice Chairperson**
2. Hon. Ben Momanyi, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Gladys Boss Shollei, CBS, M.P.
7. Hon. Japheth Mutai, M.P.
8. Hon. Beatrice Adagala, M.P.
9. Hon. John M. Wambugu, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mr. Denis Abisai - Principal Legal Counsel I
3. Ms. Halima Hussein - Third Clerk Assistant
4. Ms. Roselyn Ndegi - Serjeant-at-Arms
5. Ms. Brigitta Mati - Legal Counsel
6. Mr. Hakeem Kimiti - Audio Officer

7. Mr. Simon Maina - Support Staff

MIN No. 455/2019:-

PRELIMINARIES

The meeting commenced at 10.40 a.m. with a word of prayer by Hon John Olago, Aluoch.

MIN No. 456/2019:-

**CONSIDERATION AND ADOPTION
OF REPORTS ON INTERNATIONAL TOURS**

The Committee considered and unanimously adopted the following reports for tabling in the House for noting by the Chairperson-

- (i) Report on the Specialized Training Data Analysis and Management in Election Administration and United States of America Mid Term Elections observation mission in Maryland, United States of America from 5th to 9th November, 2018;
- (ii) Report on Attendance to the 41st International Association of Commercial Administrators (IACA) Annual Conference held in Charlotte, North Carolina, United States of America from 6th to 10th May, 2018;
- (iii) Reports on Electoral Conflict Resolution Training by the International Centre for Parliamentary Studies (ICPS) held in London, United Kingdom from 21st to 25th January, 2019; and
- (iv) Report on Attendance to the International Bar Association (IBA) Annual Conference held from 7th to 12th October, 2018 in Rome, Italy.

MIN No. 457/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at midday until 2.30 p.m. of the same day.

Signed.....

Chairperson

Date.....28-03-19.....

MINUTES OF THE ONE HUNDRED AND SIXTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 21ST MARCH, 2019 AT 10.30 A.M. IN SHIMBA HALL, PRIDE-INN PARADISE HOTEL, MOMBASA

PRESENT-

- | | | |
|-----------------------------------|---|--------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. John Olago Aluoch, M.P. | | |
| 3. Hon. William K. Mwamkale, M.P. | | |
| 4. Hon. Peter Kaluma, M.P. | | |
| 5. Hon. Charles Gimose, M.P. | | |
| 6. Hon. George G. Murugara, M.P. | | |
| 7. Hon. Adan Haji Yussuf, M.P. | | |
| 8. Hon. Anthony G. Kiai, M.P. | | |
| 9. Hon. John Kiarie Waweru, M.P. | | |
| 10. Hon. Jennifer Shamalla, M.P. | | |

ABSENT WITH APOLOGIES

- | | | |
|--|---|-------------------------|
| 1. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 2. Hon. Ben Momanyi, M.P. | | |
| 3. Hon. Roselinda Soipan Tuya, M.P. | | |
| 4. Hon. Johana Ng'eno, M.P. | | |
| 5. Hon. Zuleikha Hassan, M.P. | | |
| 6. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 7. Hon. Japheth Mutai, M.P. | | |
| 8. Hon. Beatrice Adagala, M.P. | | |
| 9. Hon. John M. Wambugu, M.P. | | |

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Roselyn Ndegi | - | Serjeant-at-Arms |
| 5. Ms. Brigitta Mati | - | Legal Counsel |
| 6. Mr. Hakeem Kimiti | - | Audio Officer |

7. Mr. Simon Maina - Support Staff

MIN No. 455/2019:-

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- (iv) Report on Attendance to the International Bar Association (IBA) Annual Conference held from 7th to 12th October, 2018 in Rome, Italy.

MIN No. 457/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at midday until 2.30 p.m. of the same day.

Signed.....
Chairperson

Date.....26/03/2019.....