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KENYA NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – SECOND SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE  
ON  
FINANCE, PLANNING & TRADE ON THE CONSIDERATION OF  
THE BUSINESS REGISTRATION SERVICES BILL, 2014

PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2014

## PREFACE

**Mr. Speaker, Sir**

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia; 'to study and review all legislations referred to it'.

**Mr. Speaker, Sir**

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (Chairman)
2. The Hon. Nelson Gaichuhie, MP (vice Chairman)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

**Mr. Speaker, Sir,**

On 19<sup>th</sup> March, 2014, the Business Registration Services Bill, 2014 sponsored by the Majority Leader, the Hon. Aden Duale, MP, was read a first time and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Article 118 of the Constitution and Standing Order No. 127.

**Mr. Speaker, Sir,**

The Committee placed an advert in the local dailies on Friday 18<sup>th</sup> April, 2014 calling for any memoranda from the public on the Bill Pursuant to Article 118 of the constitution. The Committee also invited the Registrar General, as the implementing government entity, for comments in the process of considering the Bill. However, the Committee did not receive any memoranda from the public on the Bill.

**Mr. Speaker, Sir,**

While examining the Bill, the Committee noted the following:

1. The principle object of the Bill is to establish the Business Registration Service as a SAGA to ensure effective administration of laws relating to incorporation, registration, operation and management of companies, partnerships and firms, the laws relating to individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, chattels transfers, adoption, coat of arms, books and newspapers, the national flag, emblems and names.

*It was the Committee's opinion that the Department of the Registration Services that is currently domiciled in the Attorney General's Office does not need to be autonomous to be efficient in the discharge of its functions. Since the government is in the process of consolidating parastatals, financial prudence will strongly work against creation of a new SAGA considering that the envisaged board of directors under clause 5 will only increase bureaucracies and the public wage bill that the central government is trying to contain.*

*It is also not clear as to which Principal Secretary that is responsible for matters of trade that will sit in the board. This comes with the understanding that we have two ministries dealing with issues of trade in the current government structure.*

2. Part II of the Bill establishes the Business Registration Services in clause 3 and sets out its functions which include implementation of policies, laws and other matters relating to registration of companies, partnerships, and firms, individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, trade unions, chattels transfers, adoptions, coat of arms, books and newspapers, the National Flag, emblems and names.
3. Part III of the Bill provides for administration of the services and sets out the composition of the Board in clause 5. The Board will be composed of ten (10) Members including the

and New York to be better placed to woo foreign investors. EDB presently has offices in Europe, USA and ASIA.

## VI. FINANCIAL IMPLICATIONS

20. The proposed Service will raise some revenue from fees charged for its services. It is however not possible to determine the total estimates of the to be generated by the Service .
21. The additional expenditure estimates of the proposed Business Registration Services is provided in table 1:

<b>Table 1: PBO Estimates of additional Expenditures in Kenya Shilings</b>			
<b>Reccurent Expenditures</b>	<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>
Field Services	20,728,431	18,655,588	16,168,176
Registration Services	73,025,223	65,722,700	56,959,674
<b>Sub- Total</b>	<b>93,753,654</b>	<b>84,378,288</b>	<b>73,127,850</b>
<b>Development Expenditures</b>	<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>
Field Services	12,600,000	22,050,000	22,680,000
Registration Services	2,250,000	1,350,000	4,050,000
<b>Sub- Total</b>	<b>14,850,000</b>	<b>23,400,000</b>	<b>26,730,000</b>
<b>Total</b>	<b>108,603,654</b>	<b>107,778,288</b>	<b>99,857,850</b>

22. The expenditure estimates for the Department of Registrar-General in 2013/14 financial is Kshs.195.15 million comprising of Kshs. 187.51 million in recurrent expenditures and Kshs.7.65 million in development expenditures.
23. Transformation of the presently existing Department of Registrar-General into Business Registration Services will occasion addition expenditure estimated at Kshs. 108.6 million in year one (2014/15) comprising of Kshs. 93.75 million in recurrent and Kshs.14.85 million in development. In year two (2015/16), the additional total expenditures is estimated at Kshs. 107.78 million comprising of Kshs 84.38 million in recurrent and Kshs 23.4 million in development. In year three (2016/17) it is estimated that the government will incur additional expenditures totalling Kshs 99.86 million comprising of Kshs. 73.13 million in recurrent and Kshs. 26.73 million in development.

## VI. POLICY OPTIONS

24. An efficient and effective business registration service is critical in making Kenya a regional business hub; reducing massive unemployment for the bulging youth; establishing an environment conducive for stable industrial developments; and

improving the county's competitiveness. The government needs to deviate from the past policies in at least one of the following ways:

- (i.) Establish a lead government agency for planning and executing strategies to enhance Kenya's position as a global/regional business hub.
- (ii.) Merge through legislation, the existing Department of Registrar- General with the Departments/State Agencies such as Kenya Investment Authority, Exports Promotions Council, Brand Kenya, Kenya Year Book, Kenya Tourist Board and Tourist Promotion Council to form Kenya Investment Corporation as per the recommendation of the Presidential Task-Force on Parastatals Reforms.
- (iii.) Merge through legislation, the existing Department of Registrar-General, Business Regulatory Reforms Unit (BRRU), and the Public Sector Accounting Standard Board provided for in Section 192 of the Public Finance Management Act, 2012 to form Accounting and Corporate Regulator Authority as per the Singapore model.
- (iv.) Consolidation of all existing enabling statutes for departments/agencies charged with the responsibility of business registration; investments and exports promotion; marketing and branding of Kenya by enacting an overarching legislation.

25. Based on the analysis, the Committee is therefore requested to make a decision concerning the Bill as shown in the table below:

	<b>Policy Option</b>	<b>Likely Impact</b>
1.	Pass the Bill as published	<ul style="list-style-type: none"> <li>• This will create an independent office of the Registrar-General and a Board.</li> <li>• This is likely to speed up business registration process and related services by creating and independent and efficient Business Registration Service.</li> </ul>
2.	Reject the Bill	<ul style="list-style-type: none"> <li>• The Registrar-General will continue as a Department in the Office of Attorney-General.</li> <li>• The office will continue to perform other non business registration related services.</li> </ul>
3.	Pass the Bill with amendments	<ul style="list-style-type: none"> <li>• The Committee may consider passing the Bill with Amendments as proposed in Annex 1.</li> </ul>

## ANNEX 1: PROPOSED AMENDMENTS

The following proposed amendment may be considered by the Committee.

1. *Delete the number 2013 in Clause 1 and replace with 2014.*

**Justification:-**This is to make correct reference of the year when the Act was enacted.

2. *Delete Clause 5(2)(f) and replace with: a new Clause (f) One member nominated by a representative body of the business community; a new Clause (g) One member nominated by a relevant professional body; and a new Clause (h) Two members nominated and appointed by the Cabinet Secretary*

**Justification: -** This is to provide for representation of the business community and a professional body in the membership of the Board

3. *Renumber Clause 5(2)(g) to Clause 5(1)(1).*- This is to take care of the proposed amendment to Clause 5 (2) (f)
4. *Renumber Clause 5(2) immediately after Clause 5(2)(g) to Clause 5(3)*- This is to take correct the numbering mistake.
5. *Amend the new Clause 5(3) to “ The Chairperson and Members of The Board shall be appointed by the Cabinet Secretary from among persons who meet the following qualifications:*
  - (a) Holds least a Bachelors Degree in Commerce, Economics, Law, or Accountancy from a recognized university in Kenya*
  - (b) Has at least 8 years knowledge and proven experience (for a Member) on matters of business registration service or management in the public or private Sector.*
  - (c) Has at least 10 years knowledge and proven experience (for a Chairperson) on matters of business registration service or management in the public or private Sector.*
  - (d) Meets the requirement of Chapter Six of the Constitution*

**Justification:** This is to avoid the ambiguity which may give the Cabinet Secretary a leeway to appoint any person in the Board.

6. *Amend Clause 6(1) to read “ The Chairperson and members appointed under Section 5(2) shall hold office:-”*

**Justification:** This is make reference to the correct clause of the Bill

7. *Amend Clause 6(1) (b) to read. “ On such terms and conditions as may be determined by the Cabinet Secretary and approved by Salaries and Remuneration Commission”*

**Justification:** *This is to align this clause with requirements of the Constitution*

8. *Amend Clause 10 to read “ The Chairperson, Members of the Board and Staff of the Service shall be paid such remuneration or allowances as determined by the Board and approved by the Cabinet Secretary upon the advice of the Salaries and Remuneration Commission*

**Justification:** *This is to align this clause with requirements of the Constitution.*

9. Amend Clause 18 (1)(a) to read: “ A person is qualified for appointment as the Registrar-General if the person:-

- (a) Has proven knowledge and experience of at least 10 years in matters relating to business registration, business management, law, economic, commerce or accounting.
- (b) Is a Citizen of Kenya and meets the requirements of Chapter Six of the Constitution
- (c) Posses a post graduate degree from a university recognized in Kenya in the areas of law, commerce, finance, economics or accountancy.
- (d) Is a member of good standing of a professional body

**Justification:** This is to provide clarity on the skills, expertise and professional requirements for this position

10. Amend Clause 28(2) to read “The Board shall submit the annual report to the Cabinet Secretary for on ward transmission to the National Assembly and the Senate three months after the end of each year to which it relates.

**Justification:** -This report should be submitted to both the National Assembly and the Senate since matters of trade development and regulation is a function that touches on the County Governments.

## ANNEX 2: ANALYSIS OF CLAUSES

Clause	Highlights	Comments
<b>Part I- Preliminary</b>		
1	Provides for short title and commencement of the Act	Delete 2013 and replace with 2014
2	Provides for interpretation of	The interpretation of the terms are proper
<b>Part II- Establishment, Objects and Functions of the Service</b>		
3	Provides for the establishment of Business Registrations service	This transforms the Department of Registrar-General into a State Corporation.
4	Provides for functions of the service	The functions are in line with the mandate.
<b>Part III- Administration</b>		
5	Provides for the Board of Directors of the Service	The knowledge and expertise required for Members of the Board in Clause (5) (2) is too general and need to be clearly specified
6.	Provides for terms and conditions of Chairperson and Members of the Board	Terms and conditions of members of the Board Clause 6 (1, b) is solely determined by the Cabinet Secretary contrary to the provisions of the

		Constitution
7.	Provides for functions of the board	The functions of the Board are clearly stipulated
8.	Defines powers of the Board	Powers of the board are clearly defined
9.	Provides for Meetings of the Board	The board to meet at least 4 times a year
10.	Provides for remuneration of the Board and staff	Remuneration and allowances of members of the Board and Staff is solely determined by the Cabinet Secretary contrary to the provisions of the Constitution
11.	Provides for delegation of powers and functions of the board.	It may be necessary to explicitly states that such delegation of powers and function does not absolve the Board from responsibility.
12.	Vacancy in the board may not affect the proceedings of the Board.	The validity of the proceedings of the Board should not be affected provided there is a quorum.
13.	Allows Board to establish committees	This is necessary for proper functioning of the Board
14.	Allows the Board to engage services of experts and consultants.	This provision is necessary to allow for utilization of professional expertise which may not be available within the Board.
15.	Provides for protection of members of staff and the Board from personal liability.	This is in line with good corporate practice and necessary to allow the staff and the Board to discharge their mandate without any fear.
16.	Provides for liability of the Board for damages.	This is proper as it makes the Board liable for damages and therefore should always act
<b>Part IV- Management and Staff of the Service</b>		
17.	Provides for Registrar-General appointed by the Cabinet Secretary on recommendation of the Board.	The Registrar-General will be the Chief Executive Officer of the Business Registration Service.
18.	Provides for the qualification of Registrar-General	The qualifications of the Registrar-General are too general and restrictive
19.	Provides for the conditions of	The conditions are clearly stipulated and provide for

	removal of Registrar-General from Office.	fair administrative action as stipulated in article 47 of the Constitution.
20.	Provides for appointment of staff of the Service.	This provides for recruitment of new staff by the Board and secondment to the Board.
21.	Provides for delegation of powers of Registrar-General	It should be expressly stated that the delegation does not absolve the Registrar-General from responsibility.
22.	Provides for safe keeping of the common seal and authentication of affixing of the seal.	The Registrar-General should be the custodian of the common seal of the Board
<b>Part V- Financial Provisions</b>		
23.	Provides for the funds of the service which shall consist of monies allocated by Parliament, grants, and donations	Parliament will allocate funds for the Service through annual appropriations.
24.	Provides for the financial years of the Service	Financial year is consistent with the Government fiscal calendar.
25.	Provides timelines for preparation of annual estimates of revenue and expenditures	The preparation of the annual estimates is consistent with the Constitutional provisions.
26.	Provides for accounting and auditing of books of the Service	The preparation of financial statements and auditing should be in line with the Public Audit Act
27.	Provides for investment of funds by the Board	The Board may invest its funds in securities, trust funds and bank deposits.
<b>Part VI- Miscellaneous Provisions</b>		
28.	Requires the Board to prepare annual performance report and submit the same to National Assembly.	This report should be submitted to both the National Assembly and the Senate.
29.	Provides for offences	A fine not exceeding Kshs. 500,000 or jail term not exceeding three year.
30.	Provisions for the Cabinet Secretary to make regulations	This is necessary to make effective the provisions of the new law

31.	Provides for transition of staff of the Department of the Registrar-General.	There may be need to vet the top management of the department (Registrar- General and deputies) before transitioning.
32.	Provides for transfer of assets and liabilities that was vested by government for use of the Department of the Registrar-General	This is necessary to provide the new organization with a framework for continuation of its operations.
33.	Provides for continuation or enforcement of all pending proceedings and claims	This transitional provision is necessary for continuity of enforcement of pending proceedings and claims.
<b>FIRST SCHEDULE (S.4)- Acts to be administered by the Service</b>		
<b>SECOND SCHEDULE-The Conduct of Business and Affairs of the Board</b>		
1	Provides for Meetings of the Board	The Board to have at least four meetings in a year. The quorum is five out of nine members excluding <i>ex-officio</i> member.
2.	Provides for disclosure of interest by members of the Board.	This is in line with good corporate and ethical practice

In the end, the Committee asked the secretariat to refine the proposed amendments and present them to the committee when it next sits.

**MIN. NO. DCF/173/2014: ANY OTHER BUSINESS**

The chairperson informed the Committee of several letters that had been written to the Committee;

- (a) Review of VAT Exemption for Manufacture of Solar products Clause 45 of the VAT amendment Act No. 7 of 2014 from Kenya Association of Manufacturers and Ubbink East Africa Limited.
- (b) VAT amendment – Animal feeds from Cereal Millers Association
- (c) Invitation of the Committee to Tour Rivatex Factory at Eldoret.
- (d) Request for a meeting from the East African Breweries to discuss the excise duty regime in alcoholic beverage

**MIN.NO. DCF/174/2014 ADJOURNMENT AND DATE OF NEXT MEETING**

The Chairperson adjourned the meeting at 12. 10 p.m. The next meeting will be held on Thursday 12<sup>th</sup> June, 2014 at the same time and venue to be confirmed and communicated.

Signed..........Date..........

**MINUTES OF THE 36<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 5<sup>th</sup> JUNE, 2014 IN THE COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, AT 10.00AM**

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**Present**

1. Hon. Mary Emase, MP - Ag. Chairperson
2. Hon. Daniel Epuyo Nanok, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Timothy Bosire, MP
7. Hon. Joash Olum, MP
8. Hon. Sakwa John Bunyasi, MP
9. Hon. Dr. Oburu Oginga, MP
10. Hon. Sammy Koech, MP
11. Hon. Lati Lelelit, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Jones Mlolwa, MP
14. Hon. Abdul Rahim Dawood, MP
15. Hon. Abdullswamad Shariff, MP

**Absent with Apologies**

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
3. Hon. Iringo Cyprian Kubai, MP
4. Hon. Joseph Limo, MP
5. Hon. Anyanga Andrew Toboso, MP
6. Hon. Ronald Tonui, MP
7. Hon. Kirwa Stephen Bitok, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Shakeel Shabbir Ahmed, MP
11. Hon. Jimmy Nuru Angwenyi, MP
12. Hon. Sumra Irshadali, MP
13. Hon. Tiras Ngahu, MP
14. Hon. Dennis Waweru, MP

**IN ATTENDANCE**

1. Mr. Evans Oanda - First Clerk Assistant
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Josephat Motonu - Fiscal Analyst
5. Mr. Abdinassir Yusuf - Fiscal Analyst

The Ag. Chairperson (Hon. Mary Emaase, MP) called the meeting to order at 10. 45 am followed by a word of prayer.

**MIN.NO. DCF/166/2014:****CONFIRMATION OF MINUTES**

Minutes of the previous meetings were confirmed as follows:

1. Minutes of the 20<sup>th</sup> sitting held on 15<sup>th</sup> April, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Jones Mlolwa, MP and seconded by the Hon. Eng. Shadrack Manga, MP.
2. Minutes of the 21<sup>st</sup> sitting held on 16<sup>th</sup> April, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Joash Olum, MP.
3. Minutes of the 22<sup>nd</sup> sitting held on 17<sup>th</sup> April, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Alfred Sambu, MP and seconded by the Hon. Daniel Epuyo Nanok, MP.
4. Minutes of the 23<sup>rd</sup> sitting held on 22<sup>nd</sup> April, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Rose Nyamunga, MP and seconded by the Hon. Joash Olum, MP.
5. Minutes of the 24<sup>th</sup> sitting held on 23<sup>rd</sup> April, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Jones Mlolwa, MP and seconded by the Hon. Joash Olum, MP.
6. Minutes of the 26<sup>th</sup> sitting held on 13<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, MP and seconded by the Hon. Alfred Sambu, MP.
7. Minutes of the 27<sup>th</sup> sitting held on 13<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Rose Nyamunga, MP.
8. Minutes of the 28<sup>th</sup> sitting held on 14<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Eng. Shadrack Manga, MP and seconded by the Hon. Sammy Koech, MP.
9. Minutes of the 29<sup>th</sup> sitting held on 14<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Sammy Koech, MP and seconded by the Hon. Timothy Bosire, MP.
10. Minutes of the 30<sup>th</sup> sitting held on 15<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, MP and seconded by the Hon. Joash Olum, MP.
11. Minutes of the 31<sup>st</sup> sitting held on 15<sup>th</sup> May, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Sammy Koech, MP and seconded by the Hon. Eng. Shadrack Manga, MP.



**MINUTES OF THE 22<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 17<sup>TH</sup> APRIL, 2014 IN THE COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, AT 10.00 A.M**

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**Present**

- |                                   |   |                         |
|-----------------------------------|---|-------------------------|
| 1. Hon. Benjamin Langat, MP       | - | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP      | - | <b>Vice-Chairperson</b> |
| 3. Hon. Sakwa John Bunyasi, MP    |   |                         |
| 4. Hon. Iringo Cyprian Kubai, MP  |   |                         |
| 5. Hon. Timothy Bosire, MP        |   |                         |
| 6. Hon. Joseph Limo, MP           |   |                         |
| 7. Hon. Mary Emase, MP            |   |                         |
| 8. Hon. Anyanga Andrew Toboso, MP |   |                         |
| 9. Hon. Ronald Tonui, MP          |   |                         |
| 10. Hon. Kirwa Stephen Bitok, MP  |   |                         |
| 11. Hon. Eng. Shadrack Manga, MP  |   |                         |
| 12. Hon. Sammy Mwaita, MP         |   |                         |
| 13. Hon. Alfred Sambu, MP         |   |                         |
| 14. Hon. Joash Olum, MP           |   |                         |
| 15. Hon. Daniel Epuyo Nanok, MP   |   |                         |

**Apologies**

1. Hon. Sakaja Johnson, MP
2. Hon. Jones Mlolwa, MP
3. Hon. Ogendo Rose Nyamunga, MP
4. Hon. Dr. Oburu Oginga, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Sammy Koech, MP
7. Hon. Lati Lelelit, MP
8. Hon. Jimmy Nuru Angwenyi, MP
9. Hon. Sumra Irshadali, MP
10. Hon. Abdul Rahim Dawood, MP
11. Hon. Tiras Ngahu, MP
12. Hon. Abdullswamad Sheriff, MP
13. Hon. Patrick Makau King'ola, MP
14. Hon. Dennis Waweru, MP

**IN ATTENDANCE**

**Kenya National Assembly**

- |                   |   |                 |
|-------------------|---|-----------------|
| Mr. Evans Oanda   | - | Clerk Assistant |
| Ms. Esther Nginyo | - | Clerk Assistant |

## **REGISTRAR GENERAL'S OFFICE**

1. Mrs. Bernice Gachegu - Registrar General
2. Ann Mwangi - State Counsel
3. Jennifer Nganga - State Counsel

## **MIN.NO. DCF/105/2014 PRELIMINARIES**

The Chairperson called the meeting to order at 10:52 am.

## **MIN.NO. DCF/106/2014: CONSIDERATION OF THE BUSINESS REGISTRATION SERVICES BILL, 2014**

The Registrar - General presented the following about the Bill:

1. The principle object of the Bill is to establish the Business Registration Service as a SAGA to ensure effective administration of laws relating to incorporation, registration, operation and management of companies, partnerships and firms, the laws relating to individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, chattels transfers, adoption, coat of arms, books and newspapers, the national flag, emblems and names.
2. Part II establishes the Business Registration Services and sets out its functions which include administering the Acts and carrying out all registrations required under the Acts specified in the First Schedule.
3. Part III provides for administration of the services and sets out the composition of the Board of the Service, its functions and powers and provides for circumstances under which a vacancy may arise on the Board. The quorum of the Board is five Members and can hold at least four meeting in a financial year (clause 9). Remuneration of the board must be approved by the cabinet Secretary as provided under clause 10.
4. Part IV provides for the management and staff of the Service. Clause 18 provides for the appointment of the Registrar general as the CEO of the Service in a competitive manner (recruitment done by the Board and appointed by the Cabinet Secretary). Clause 19 provides for circumstances under which the registrar general may be removed from office after being given an opportunity in writing to defend himself/herself. Clause 20 provides that the Board can request staff secondment from the PSC who shall be regarded as employees of the Board when working under the Services.
5. Part V of the Bill sets out the financial provisions in relation to the Service. Clause 23 provides for the monies that shall constitute the funds of the Service. Clause 25 provides for the preparation of the annual estimates of the Service.
6. Part VI contains miscellaneous provisions. Clause 28 provides for the report of the Service and the matters that should be contained therein. Clause 29 creates offences by prohibiting a

person from obstructing or hindering a member of Service, submitting false information to a member of staff of the service or misleading a member of staff of the service. Clause 30 empowers the Cabinet Secretary to make Regulations. Clause 31 provides that until the Board is constituted and has competitively recruited staff in accordance with this Act, the staff of the department of Registrar general employed by the government immediately before the commencement of this Act, shall be deemed to be staff of the Service.

7. The First Schedule specifies the laws that are to be administered by the Service. The Second Schedule provides for the manner in which the meetings and other affairs of the Board will be conducted.

### **COMMITTEE CONCERNS/CLARIFICATIONS**

1. The Bill does not make reference to ICT as solution to challenges affecting business registration
2. The Department of the Registration Services does not need to be autonomous to be efficient in the discharge of its functions. Since the government is in the process of consolidating parastatals, financial prudence will strongly work against creation of a new SAGA. The envisaged Board will only increase bureaucracies and the public wage bill that the central government is trying to contain.
3. Clause 18 provides that one must be an advocate to qualify the Registrar General's position. This is erroneous as it excludes other relevant professions that are business related.
4. The fate of staff working for the Service prior to recruitment of its staff is unclear. It will be proper if the staff working in the registrar general's office were absorbed into the service rather than recruiting new ones.

### **RESPONSES**

The Registrar General responded as follows:

1. The draft legislative proposal that was forwarded for drafting had provisions for ICT systems to be used within the proposed Services. However, it was omitted from the Bill that was finally published. In the last four years, the office has been pushing for creation of the online registration system. These efforts have been frustrated by the narrative that all government ICT programmes will be provided by the ICT Board. The department will propose amendments
2. Creation of the proposed SAGA will increase the efficiency of service delivery. The SAGA will require government funding but will eventually be self sustaining in the long run. The annual expenditure for the department as of now is khs. 300m while the estimated collection is Khs. 207M

**Resolutions**

The Committee directed the Registrar General to prepare a budget to roll out the ICT system and present it to the committee when it next sits. She will also be required to present the policy brief underlying the proposed Bill.

**MIN.NO. DCF/107/2014 MEETING WITH THE PS, NATIONAL TREASURY ON THE CONSIDERATION OF THE PETION BY COFEK AND THE REIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) BILL, 2013**

This agenda item was differred to a later date due to unavailability of the officials from the National Treasury.

**MIN.NO. DCF/108/2014 ANY OTHER BUSINESS**

The Committee deliberated on the issues raised by the National Treasury with regard to settlement of Anglo leasing claims at its joint meeting with the Budget and Appropriations of 19<sup>th</sup> February 2014. It resolved to urgently have a joint meeting with Treasury and Budget Committee to conclude the matter once and for all. The Chairperson undertook to liase with the Chairman of Budget and Appropriations Committee to convene such a meeting.

**MIN.NO. DCF/109/2014 ADJOURNMENT**

The Chairperson adjourned the meeting at 12. 56 p.m.

Signed.....  
Chairperson

Date.....

chairperson and the Registrar General who shall be an ex-officio member. This part also provides for the functions and powers of the Board and provides for circumstances under which a vacancy may arise on the Board. In its current form, the Bill does not provide clearly the qualification of the Members of the Board- this may be open to abuse by the appointing authority. The quorum of the Board is five Members and can hold at least four meeting in a financial year (clause 9). Clause 10 provides that remuneration of the board must be approved by the cabinet Secretary but fails to recognize the Constitutional role of the Salaries and Remuneration Commission in the process.

4. **Part IV** of the Bill provides for the management and staff of the Service with express provision in clause 18 for the appointment of the Registrar general as the Chief Executive Officer of the Service in a competitive manner (recruitment done by the Board and appointed by the Cabinet Secretary).

*Of concern to the Committee is the limitation in the qualification of the Registrar General to an individual qualified to serve as an advocate of the High Court in Clause 18 (1) (a). This is discriminative as it excludes other relevant professionals that can do the job.*

Clause 19 of the Bill provides for circumstances under which the Registrar General may be removed from office after being given an opportunity in writing to defend himself/herself. This is consistent with Article 52 of the of the Constitution on fair hearing Clause 20 provides that the Board can request staff secondment from the Public Service Commission who shall be regarded as employees of the Board when working under the Services.

5. **Part V** of the Bill sets out the financial provisions in relation to the Service. Clause 23 provides for the monies that shall constitute the funds of the Service. Clause 25 provides for the preparation of the annual estimates of the Service.
6. **Part VI** of the Bill contains miscellaneous provisions. Clause 28 provides for the report of the Service and the matters that should be contained therein. Clause 29 creates offences by prohibiting a person from obstructing or hindering a member of Service, submitting false information to a member of staff of the service or misleading a member of staff of the service. Clause 30 empowers the Cabinet Secretary to make Regulations.

*Clause 31 provides that until the Board is constituted and has competitively recruited staff in accordance with this Act, the staff of the department of Registrar General employed by the government immediately before the commencement of this Act, shall be deemed to be staff of the Service. However, the fate of staff working for the Service after recruitment of its staff is unclear.*

7. The First Schedule specifies the laws that are to be administered by the Service. Companies Act (Cap 486); Partnership Act No 16 of 2012; Limited Liability Partnership Act, No. 42 of 2011; the Societies Act (Cap. 108); College of Arms Act (Cap. 98); Registration of Business Names Act (Cap 499); Hire Purchase Act (Cap. 507); Books and Newspapers Act (Cap. 111); Bankruptcy Act (Cap. 53); Chattels Transfers Act (Cap. 28); National Flag, Emblems and Names Act (Cap. 99)

8. The Second Schedule provides for the manner in which the meetings and other affairs of the Board will be conducted.
9. It is worrying that the bill does not provide for automation of Registration Services considering that the ease of doing business primarily depends on how fast registration services can be obtained.

**Mr. Speaker, Sir,**

The Committee will propose amendments to the Bill in clauses 1,5, 6, 10, 18, and 31. The proposed amendment to clause 1 is editorial, while the amendments to clause 5 clarifies that it the Principal Secretary for internal trade that will sit in Board and further provides for qualifications of the Board Members. Amendments to clause 6 recognizes the constitutional role of the Salaries and Remuneration Commission with regard to remunerating State/Public officers while clause 10 separates the remuneration procedure to be followed between the Board and the Staff of the Services. Proposed amendments to Clause 18 will widen the scope of qualifications for the Registrar General while clause 31 will ensure stability of staff compliment upon setting of the services.

**Mr. Speaker, Sir,**

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

**Mr. Speaker, Sir,**

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the Business Registration Services Bill, 2014 for consideration Pursuant to Standing Order 127

Signed B. Langat ..... Date 12-05-2014 .....

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

## ANALYSIS OF PERTINENT ISSUES IN THE BILL

The following are pertinent issues from the Bill:

- (a) **Compliance to Pre-legislative Scrutiny:-** The Bill in its current form and content fits the definition of a money bill as provided for in Article 114 (3) of the Constitution.
- (b) **Budgetary Implications:** - The transformation of the presently existing Department of Registrar-General into a semi autonomous government agency will occasion additional expenditures to the government. The estimated additional funds required are provided in table 1.
- (c) **Representation of Business and Professional Bodies in the Board:** There is need to have an express provision in the Bill that ensures that business community/investors and professional bodies are represented in the Board.
- (d) **Knowledge and Experience of the Board Members:** The knowledge and expertise required for Members of the Board is too general. The Bill should make clear provisions on academic, professional qualifications and set minimum of experience in particular field without the generalities.
- (e) **Remuneration and Terms & Conditions of the Board:** - The remuneration and terms and conditions of members of the Board should be determined by the Cabinet Secretary in consultation with Salaries and Remuneration Commission.
- (f) **Qualifications and Experience for Registrar-General:** - The qualifications of the Registrar-General are too general and restrictive. The professional qualifications should not be restricted to advocates of the High Court only.
- (g) **Annual Report of the Board:** - This report should be submitted to both the National Assembly and the Senate. Trade development and regulation is a function that touches on the County Governments as provided for in the constitution.

## SITUATION ANALYSIS

### (a) The Department of Registrar- General, Kenya

1. The Department of Registrar-General is presently one of the Departments under the Office of the Attorney-General.
2. The Department is headed by Registrar-General and is mandated to provide the following functions: *Registration of Companies; Registration of Business Names; Registration of Chattels Mortgage; Registration of Charges and Debentures; Registration of Societies and Hire Purchase Agreements; Registration of Books and Newspapers; Licensing of Hire Purchase Business;*

*Registration of Building Societies and Coat of Arms; Registration of Marriages; Licensing of Church Ministers to perform Marriages; Registration of Adoptions; Official Receiver; Administration of Copyrights; and Registration of Trade Unions.*

**(b) Business Licences (e-Registry)**

3. Business Licensing e-Registry is one of several integrated and mutually supportive measures being implemented by the Government to establish a better business regulatory environment in Kenya. The other measures include: *(i) the comprehensive review of all business licenses conducted in 2006-7, (ii) the establishment of a Business Regulatory Reform Unit, (iii) the development of a medium-term Regulatory Reform Strategy, which will frame continued regulatory streamlining and capacity-building, as well as (iv) a Regulatory Impact Assessment (RIA) system to assess the costs and benefits of new regulations.*
4. The Government established a business licence (e-Registry's) in 2011 with a role to increasing transparency and reducing regulatory risks to businesses by providing easy access to exhaustive information about business licenses and permits as well as the formalities businesses must comply with to obtain them.
5. The e-Registry is managed by a team in the Business Regulatory Reform Unit (BRRU) within the National Treasury. The team is charged with: (i) keeping the content of the e-Registry database up to date by liaising with regulators across government and (ii) responding to e-mail and telephone enquiries from users seeking clarification or further information about specific licenses.
6. The e-Registry database currently contains information on over 400 business licenses and permits.

**(c) Doing Business Rankings**

7. According to World Bank's Doing Business Ranking 2014 which ranked 189 economies on the ease of doing business, Kenya slide six places down to rank at position 134 compared to position 128 in 2013 in the ease of starting a business; it fell three positions down to rank 166 compared to 163 in 2013 on the ease of getting electricity; slide two places down to position 163 compared to position 161 in 2013 on the ease of registering property; improved five place up to position 166 compared to 171 in 2012 on ease of paying taxes; ranked favorably at position 13 but also slide from position 11 in 2013 on the ease of getting credit.

**INTERNATIONAL COMPARATIVE ANALYSIS**

**(a) Rwanda Development Board (RDB)**

8. The Office of the Registrar-General (ORG) in Rwanda was established in 2008 as a Division under the Investment Promotion and Implementation Department of the Rwanda Development Board (RDB).
9. The Office is tasked with facilitating investment through developing and maintaining a world class efficient business register and promoting a business friendly regulatory framework. Particular responsibility of the office include to initiate, implement and follow up the activities relating to registering and striking from the register; businesses, secured transactions and intellectual property rights.
10. The Rwanda Development Board (RDB) was set up as a one stop shop for all investors by bringing together all the government agencies responsible for the entire investor experience under one roof. This includes key agencies responsible for business registration, investment promotion, environmental clearances, privatization and specialist agencies which support the priority sectors of ICT and tourism as well as SMEs and human capacity development in the private sector.
11. The RDB is independent and influential and reports directly to the President and is guided by a Board that includes all the key Ministers (e.g., finance, commerce, infrastructure, agriculture). The RDB is built with global expertise and modeled on international best practice examples of Singapore and Costa Rica.

**(b) Singapore Economic Development Board (EDB)**

12. Singapore is one of the leading 'ease of doing business' jurisdictions in the world. Accounting and Corporate Regulatory Authority (ACRA) was formed as a statutory board on 1<sup>st</sup> April 2004, following the merger of the then Registry of Companies and Businesses (RCB), and the Public Accountants' Board (PAB).
13. The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business entities and public accountants in Singapore. ACRA also plays the role of a facilitator for the development of business entities and the public accountancy profession.
14. The mission of ACRA is to provide a responsive and trusted regulatory environment for businesses and public accountants. ACRA's role is to achieve synergies between the monitoring of corporate compliance with disclosure requirements and regulation of public accountants performing statutory audit.
15. Singapore Economic Development Board (EDB) was established as the lead government agency for planning and executing strategies to enhance Singapore's position as a global business

centre. Singapore's solution then was to develop its export-oriented industries, as EDB opened its first overseas centres in Hong Kong and New York to be better placed to woo foreign investors. EDB presently has offices in Europe, USA and ASIA.

## FINANCIAL IMPLICATIONS

16. The proposed Service will raise some revenue from fees charged for its services. It is however not possible to determine the total estimates of the to be generated by the Service .
17. The additional expenditure estimates of the proposed Business Registration Services is provided in table 1:

Reccurent Expenditures	2014/2015	2015/2016	2016/2017
Field Services	20,728,431	18,655,588	16,168,176
Registration Services	73,025,223	65,722,700	56,959,674
<b>Sub- Total</b>	<b>93,753,654</b>	<b>84,378,288</b>	<b>73,127,850</b>
Development Expenditures	2014/2015	2015/2016	2016/2017
Field Services	12,600,000	22,050,000	22,680,000
Registration Services	2,250,000	1,350,000	4,050,000
<b>Sub- Total</b>	<b>14,850,000</b>	<b>23,400,000</b>	<b>26,730,000</b>
<b>Total</b>	<b>108,603,654</b>	<b>107,778,288</b>	<b>99,857,850</b>

18. The expenditure estimates for the Department of Registrar-General in 2013/14 financial is Kshs.195.15 million comprising of Kshs. 187.51 million in recurrent expenditures and Kshs.7.65 million in development expenditures.
19. Transformation of the presently existing Department of Registrar-General into Business Registration Services will occasion addition expenditure estimated at Kshs. 108.6 million in year one (2014/15) comprising of Kshs. 93.75 million in recurrent and Kshs.14.85 million in development. In year two (2015/16), the additional total expenditures is estimated at Kshs. 107.78 million comprising of Kshs 84.38 million in recurrent and Kshs 23.4 million in development. In year three (2016/17) it is estimated that the government will incur additional expenditures totalling Kshs 99.86 million compring of Kshs. 73.13 million in recurrent and Kshs. 26.73 million in development.

## POLICY OPTIONS

20. An efficient and effective business registration service is critical in making Kenya a regional business hub; reducing massive unemployment for the bulging youth; establishing an

environment conducive for stable industrial developments; and improving the county's competitiveness. The government needs to deviate from the past policies in at least one of the following ways:

- (i.) Establish a lead government agency for planning and executing strategies to enhance Kenya's position as a global/regional business hub.
- (ii.) Merge through legislation, the existing Department of Registrar- General with the Departments/State Agencies such as Kenya Investment Authority, Exports Promotions Council, Brand Kenya, Kenya Year Book, Kenya Tourist Board and Tourist Promotion Council to form Kenya Investment Corporation as per the recommendation of the Presidential Task-Force on Parastatals Reforms.
- (iii.) Merge through legislation, the existing Department of Registrar-General, Business Regulatory Reforms Unit (BRRU), and the Public Sector Accounting Standard Board provided for in Section 192 of the Public Finance Management Act, 2012 to form Accounting and Corporate Regulator Authority as per the Singapore model.
- (iv.) Consolidation of all existing enabling statutes for departments/agencies charged with the responsibility of business registration; investments and exports promotion; marketing and branding of Kenya by enacting an overarching legislation.

## ANALYSIS OF CLAUSES

Clause	Highlights	Comments
<b>Part I- Preliminary</b>		
1	Provides for short title and commencement of the Act	Delete 2013 and replace with 2014
2	Provides for interpretation of	The interpretation of the terms are proper
<b>Part II- Establishment, Objects and Functions of the Service</b>		
3	Provides for the establishment of Business Registration service	This transforms the Department of Registrar-General into a State Corporation.
4	Provides for functions of the service	The functions are in line with the mandate.
<b>Part III- Administration</b>		
5	Provides for the Board of Directors of the Service	The knowledge and expertise required for Members of the Board in Clause (5) (2) is too general and need to be clearly specified

6.	Provides for terms and conditions of Chairperson and Members of the Board	Terms and conditions of members of the Board Clause 6 (1, b) is solely determined by the Cabinet Secretary contrary to the provisions of the Constitution
7.	Provides for functions of the board	The functions of the Board are clearly stipulated
8.	Defines powers of the Board	Powers of the board are clearly defined
9.	Provides for Meetings of the Board	The board to meet at least 4 times a year
10.	Provides for remuneration of the Board and staff	Remuneration and allowances of members of the Board and Staff is solely determined by the Cabinet Secretary contrary to the provisions of the Constitution
11.	Provides for delegation of powers and functions of the board.	It may be necessary to explicitly states that such delegation of powers and function does not absolve the Board from responsibility.
12.	Vacancy in the board may not affect the proceedings of the Board.	The validity of the proceedings of the Board should not be affected provided there is a quorum.
13.	Allows Board to establish committees	This is necessary for proper functioning of the Board
14.	Allows the Board to engage services of experts and consultants.	This provision is necessary to allow for utilization of professional expertise which may not be available within the Board.
15.	Provides for protection of members of staff and the Board from personal liability.	This is in line with good corporate practice and necessary to allow the staff and the Board to discharge their mandate without any fear.
16.	Provides for liability of the Board for damages.	This is proper as it makes the Board liable for damages and therefore should always act
<b>Part IV- Management and Staff of the Service</b>		
17.	Provides for Registrar-General appointed by the Cabinet Secretary on recommendation of the Board.	The Registrar-General will be the Chief Executive Officer of the Business Registration Service.
18.	Provides for the qualification of Registrar-General	The qualifications of the Registrar-General are too general and restrictive
19.	Provides for the conditions of removal of Registrar-General from Office.	The conditions are clearly stipulated and provide for fair administrative action as stipulated in article 47 of the Constitution.
20.	Provides for appointment of staff of the Service.	This provides for recruitment if new staff by the Board and secondment to the Board.

21.	Provides for delegation of powers of Registrar-General	It should be expressly stated that the delegation does not absolve the Registrar-General from responsibility.
22.	Provides for safe keeping of the common seal and authentication of affixing of the seal.	The Registrar-General should be the custodian of the common seal of the Board
<b>Part V- Financial Provisions</b>		
23.	Provides for the funds of the service which shall consist of monies allocated by Parliament, grants, and donations	Parliament will allocate funds for the Service through annual appropriations.
24.	Provides for the financial years of the Service	Financial year is consistent with the Government fiscal calendar.
25.	Provides timelines for preparation of annual estimates of revenue and expenditures	The preparation of the annual estimates is consistent with the Constitutional provisions.
26.	Provides for accounting and auditing of books of the Service	The preparation of financial statements and auditing should be in line with the Public Audit Act
27.	Provides for investment of funds by the Board	The Board may invest its funds in securities, trust funds and bank deposits.
<b>Part VI- Miscellaneous Provisions</b>		
28.	Requires the Board to prepare annual performance report and submit the same to National Assembly.	This report should be submitted to both the National Assembly and the Senate.
29.	Provides for offences	A fine not exceeding Kshs. 500,000 or jail term not exceeding three year.
30.	Provisions for the Cabinet Secretary to make regulations	This is necessary to make effective the provisions of the new law
31.	Provides for transition of staff of the Department of the Registrar-General.	There may be need to vet the top management of the department (Registrar- General and deputies) before transitioning.
32.	Provides for transfer of assets and liabilities that was vested by government for use of the Department of the Registrar-General	This is necessary to provide the new organization with a framework for continuation of its operations.
33.	Provides for continuation or enforcement of all pending	This transitional provision is necessary for continuity of enforcement of pending proceedings and claims.

	proceedings and claims	
<b>FIRST SCHEDULE (S.4)- Acts to be administered by the Service</b>		
<b>SECOND SCHEDULE-The Conduct of Business and Affairs of the Board</b>		
1	Provides for Meetings of the Board	The Board to have at least four meetings in a year. The quorum is five out of nine members excluding <i>ex-officio</i> member.
2.	Provides for disclosure of interest by members of the Board.	This is in line with good corporate and ethical practice

(v.)

## COMMITTEE'S PROPOSED AMENDMENTS

The Committee is considering the following amendments to the Business Registration Services Bill, 2014 for introduction during the Committee Stage of the Bill:-

### CLAUSE 1

THAT, clause 1 be amended by deleting the number "2013" and replacing therefor with the number "2014"

#### Justification

To make correct reference to the Act

### CLAUSE 5

THAT, Clause 5 be amended:-

- (a) In sub clause 5(2)(c) by inserting the word "internal" immediately before the word "trade"

#### Justification

To clearly provide that it is the Principal Secretary responsible for internal trade that will be represented in the Board. The Bill does not take cognizance that internal and external trades are being administered by different principal secretaries.

- (b) By deleting sub clauses 5(2)(f) and (g) and replacing therefore with the following:

- (f) one member nominated by the Kenya private Sector Alliance
- (g) one member nominated by the Institute of Certified Public Secretaries
- (h) two other members; and
- (i) the Registrar-General who shall be an ex-officio member

#### Justification

This provides for representation of both the business and professional bodies in the Board membership. This does not change the total number of the Board.

- (c) By deleting the paragraph immediately after clause 5(2)(g) and replacing therefore with the following:

(3) the chairperson and the members of the Board referred to in subsections 2(f), 2(g), and 2(h) shall be appointed by the Cabinet Secretary from persons who meet the following criteria:

- (i) Holder of a bachelors degree from a university recognized in Kenya;
- (ii) For the Chairperson, possesses at least 8 years experience in senior management in the private sector or public sector, or academia; and
- (iii) Meets the requirement of Chapter 6 of the Constitution.

Justification

This provides for the qualifications of both the chairperson and the Board Members to avoid ambiguity.

**CLAUSE 6**

THAT, Clause 6 be amended

- (a) In Sub clauses 6(1) by deleting the number “5(1)(g)” and replacing therefore with the numbers “5(2)(f), 5(2)(g), and 5(2)(h)”

Justification

This makes correct reference of the sub clauses.

- (b) In sub clause 6(1)(b) by inserting the words “in consultations with the Salaries and Remuneration Commission” after the words “Cabinet Secretary”

Justification

Remuneration of public and state officers is a preserve of the Salaries and Remuneration Commission as per the constitution of Kenya.

**CLAUSE 10**

THAT clause 10 be deleted and replaced with the following:

10(1). The Chairperson and Members of the Board shall be paid such remuneration or allowances as may be determined by the Cabinet Secretary upon the advice of the Salaries and Remuneration Commission.

10 (2). The Board may appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of services as the Board may determine with the approval of the Cabinet Secretary.

Justification

This is to separate the provisions for payment of board members from that of staff.

**CLAUSE 18**

THAT clause 18(1) be deleted and replaced therefore with the following

18(1) A person is qualified for appointment as the Registrar-General if the person:-

- a) Holds a Bachelors degree in a relevant field of study;
- b) Possesses at least 8 years work experience in a relevant field;
- c) Is a Citizen of Kenya and meets the requirements of Chapter Six of the Constitution;

Justification

This opens the spectrum of the professionals from where the Registrar general can be appointed from rather than being limited to the law professions as provided for in the Bill.

CLAUSE 31

THAT, clause 31 of the Bill be deleted and replaced therefore with the following

The staff of the department of the Registrar-General employed by the government immediately before the commencement of this Act, shall be deemed to be the staff of the service.

Justification

This provides a clear transition and the fate of staff working in the registrar's office. If the Bill is passed in the current form, the Board will be required to hire new staff and the current staff working in the service will either be retained or redeployed in the Public service. This may create a bloated workforce similar to what is happening in the counties.

**MINUTES OF THE 38<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON THURSDAY 12<sup>TH</sup> JUNE, 2014 IN THE  
BOARD ROOM, 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, AT 11.00AM**

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**Present**

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Hon. Benjamin Langat, MP        | - | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP       | - | <b>Vice-Chairperson</b> |
| 3. Hon. Timothy Bosire, MP         |   |                         |
| 4. Hon. Anyanga Andrew Toboso, MP  |   |                         |
| 5. Hon. Joseph Limo, MP            |   |                         |
| 6. Hon. Patrick Makau King'ola, MP |   |                         |
| 7. Hon. Iringo Cyprian Kubai, MP   |   |                         |
| 8. Hon. Abdul Rahim Dawood, MP     |   |                         |
| 9. Hon. Abdullswamad Shariff, MP   |   |                         |
| 10. Hon. Eng. Shadrack Manga, MP   |   |                         |
| 11. Hon. Lati Lelelit, MP          |   |                         |
| 12. Hon. Jones Mlolwa, MP          |   |                         |

**Absent with Apologies**

1. Hon. Mary Emase, MP
2. Hon. Alfred Sambu, MP
3. Hon. Joash Olum, MP
4. Hon. Sammy Koech, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Ogendo Rose Nyamunga, MP
7. Hon. Ronald Tonui, MP
8. Hon. Kirwa Stephen Bitok, MP
9. Hon. Sakaja Johnson, MP
10. Hon. Shakeel Shabbir Ahmed, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Tiras Ngahu, MP
13. Hon. Dennis Waweru, MP
14. Hon. Jimmy Nuru Angwenyi, MP
15. Hon. Dr. Oburu Oginga, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Daniel Epuyo Nanok, MP

**IN ATTENDANCE**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda      | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno  | - | Third Clerk Assistant |
| 4. Benjamin Ngimor      | - | Fiscal Analyst        |

The Chairperson called the meeting to order at 11.05 am followed by a word of prayer from Hon. Abdul Rahim Dawood,MP.

**MIN.NO. DCF/176/2014:            CONSIDERATION OF SCRAP METAL BILL, 2014**

The Committee was informed that the Secretariat had received memoranda from three institutions calling for introduction of a number of amendments to the Bill. The Memoranda was submitted pursuant to the advert placed in the local dailies on 18<sup>th</sup> April, 2014 calling for the same from Parliament. The Associated Battery Manufacturers (East Africa) Limited; the Kenya Association of Manufacturers and Public Interest Stakeholder Group in Scrap Metal Trade submitted their memoranda on the Bill.

The Committee was further informed that the received memoranda had been consolidated and a report compiled. The Committee went through the draft report and resolved to invite the stakeholders to clarify on the proposed amendments they wanted introduced. The consolidated amendments are itemized as follows:

**CLAUSE 2**

**THAT** clause 2 be amended by inserting the following definition:-

“dealer”, means a person who buys scrap metal for the sole purpose of selling in its original form and excludes generators and users of metal by products

**Justification**

The Scrap Metal Bill covers scrap metal dealers. The generators and smelters are not dealers in scrap metal but produce or use scrap metal as a byproduct and raw material for their manufacturing processes. The inclusion of generators and smelters in the application of the Bill will impact negatively on the industry as they do not deal in scrap metal as a prime business but buy scrap metal as a raw material. Scrap metal is produced by the Industry as a process generated waste.

**CLAUSE 4**

**THAT** clause 4 be amended as follows

- (a) In subclause 1(a) by inserting the words “or Private Sector” after the word “sector”

**Justification**

This expands the qualification of the chairperson to the Council to include an individual with ten years experience in both the public and the private sector rather than limit it to only the public sector as provided in the Bill.

- (b) By deleting sub-clauses 4(e)(i) to (iv) by deleting them and replacing therefor with:
- (i) one person nominated by the Scrap Metal Dealers Association
  - (ii) one person nominated by the Metal cottage industry
  - (iii) one person nominated by the Kenya Association of Manufacturers
  - (iv) one person nominated by large Utility companies / Agencies in charge of infrastructure on rotational basis
  - (v) one person nominated by the Kenya Private Sector Alliance
  - (vi) one person nominated by the Consumer Federation of Kenya

Justification

This brings on board a more representative body of the private sector (KEPSA) in the nomination of the representatives of the private sector into the council rather than limiting it to the Kenya Association of Manufacturers as is the case in the Bill.

- (c) In sub-clause 4(e) by inserting the following sub-clause 4(1)(f) immediately after 4(1)e)(iv):

*the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialization or a representative*

Justification

This brings on board the Principal Secretary for industrialization under whose docket the council will be domiciled

**CLAUSE 6**

THAT clause 6 of the Bill be amended as follows-

- (a) By deleting Sub-clause 6(1)(a) and replacing it with the following

*The appropriate measures and mechanisms for regulating the scrap metal industry to ensure long term economic growth, while protecting public health and high levels of environmental stewardship in scrap metal recycling industry as required by the Basel Convention in the case of hazardous waste*

- (b) In Sub-clause (b) by adding the following words immediately after the word "infrastructure"

*"and private property; Such measures to be in conformity with EAC legislations"*

- (c) In Sub-clause (d) by inserting the following new sub-clause 4(e) immediately after sub-clause (d)

*The methods of attracting investors to utilize excess scrap materials available in the Kenyan market; and / or supporting existing users of scrap to increase their capacity;*

Justification

The functions of the Council appear shallow and self serving yet the regulatory role of the Council should be a mechanism to ensure economic growth, protection of public good, like employee safety and safeguarding public health and ensure consistent applications of regional and international conventions which Kenya is a signatory to, such as the Basel Convention that regulates handling of hazardous waste like scrap automotive batteries, and trans-boundary movement of such scrap materials as provided for in the Bamako Accords. Equally important is the National Environmental Management and Coordination Act, and the East African Common Market agreements.”

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following words immediately after the word “council”

“and is member of scrap metal association”

Justification

To provide that it is an offence to deal with scrap metal if an individual is not a member of the scrap metal association.

CLAUSE 26

THAT clause 26 of the Bill be amended by deleting sub-clauses 1, 2, 3, and 4 and replacing therefore with the following:

26(1)(a) There shall be no exports of scrap metal in any form.

(b) No export of scrap automotive batteries, scrap lead, semi recycled lead, crude lead or semi processed lead in any form.

(2) Under very special instances, in dealing with unforeseen circumstances, the Cabinet Secretary responsible for matters relating to finance, in consultation with the Cabinet Secretary responsible for Industrialization, and with the recommendation of the Council, may authorize the export of an amount of specific scrap for a specified period. This however does not include items in (b) above.

(3) Any export allowed under subsection (2) shall be with respect to—

- (a) a certain type of non-ferrous metals upon written proof from each of the registered millers in Kenya confirming that there is no demand or capacity for the excess volume of scrap available
- (b) a specific licensee and for a specific quantity and period

Justification

To prohibit export of scrap metals and provide for the rare circumstances under which metals could be exported.

**MIN.NO.DCF/177/2014: ADOPTION OF THE DRAFT REPORT ON THE BUSINESS REGISTRATION SERVICES BILL, 2014**

The Committee unanimously adopted the draft report. The secretariat was asked to prepare the report for tabling.

**MIN.NO.DCF/178/2014: CONSIDERATION OF THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) BILL, 2013**

The Committee considered some of the material differences between the legislative proposal by the National Treasury and the Bill by Hon. John Mbadi, MP that is undergoing Second Reading. The following were identified as the major differences:


	proposal by the National Treasury	Bill by Hon. John Mbadi, MP
Entitlements	<ul style="list-style-type: none"> <li>• Prime Minister</li> <li>• Deputy President</li> <li>• Vice president</li> <li>• Speaker of the National Assembly</li> <li>• Speaker of the Senate</li> <li>• Chief Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Prime Minister</li> <li>• Vice President</li> <li>• Deputy President</li> <li>• Speaker of the National Assembly</li> <li>• Speaker of the Senate</li> </ul>
Monthly Pension	65% of last monthly salary	80% of last Monthly salary
Lump-sum payment on retirement	One year salary of each term in office	One and half year salary of each term in office
vehicles	Deputy President/Prime Minister – one saloon of max 2000 cc replaceable after 6 years, one four wheel drive replaceable after 8 years	Deputy President /Prime Minister – two cars saloon max 2000 cc, one four wheel drive max 3000 cc each replaceable after 4 years
Fuel Allowance	Fuel Card for mileage not exceeding 20,000KM per	15% of current monthly salary of office holder

	annum	
Staff	2 drivers, one Personal Assistant, one secretary, one senior support staff	Deputy President/Prime Minister- three drivers, one Personal Assistant, one accountant, two secretaries, two house Keepers, two senior support staff, two gardeners, two cooks, two cleaners  Speakers- two drivers, one Personal Assistant, One secretary, one housekeeper, one senior support staff, one gardener, one cleaner
Effective date	A person should have retired from office after 1 <sup>st</sup> January 2008. The person should not hold office in any political party or actively engage in politics at any time after expiry of six months after ceasing to hold office (clause 6.1)	A person should have retired from office after 15 <sup>th</sup> January 2008 and don't engage in elective politics (clause 3)
Term office service to qualify for benefits	Chief justice, Speakers and the Prime Minister should have served for 2 terms or ten years	Not provided

The Committee observed that this being a money Bill, it was important to process it alongside the provisions of Article 114 of the Constitution. The Committee further resolved that it can only consider the Bill that is properly before the House (Hon. Mbadi's Bill) and not the legislative proposal from the National Treasury. The Secretariat was therefore asked to liaise with the National Treasury for input before the committee compiles its report.

**MIN.NO. DCF/179/2014                      ADJOURNMENT AND DATE OF NEXT MEETING**

The Chairperson adjourned the meeting at 12.30 p.m. The next meeting will be held on Tuesday 17<sup>th</sup> June, 2014.

Signed.....

**Chairperson**

Date.....

**MINUTES OF THE 37<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 10<sup>th</sup> JUNE, 2014 IN THE BOARD ROOM, 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, AT 10.00AM**

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**Present**

1. Hon. Benjamin Langat, MP - **Chairperson**
2. Hon. Nelson Gaichuhie, MP - **Vice-Chairperson**
3. Hon. Daniel Epuyo Nanok, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Timothy Bosire, MP
6. Hon. Dr. Oburu Oginga, MP
7. Hon. Anyanga Andrew Toboso, MP
8. Hon. Joseph Limo, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Iringo Cyprian Kubai, MP
11. Hon. Jimmy Nuru Angwenyi, MP
12. Hon. Abdul Rahim Dawood ,MP

**Absent with Apologies**

1. Hon. Mary Emase, MP
2. Hon. Alfred Sambu, MP
3. Hon. Joash Olum, MP
4. Hon. Jones Mlolwa, MP
5. Hon. Sammy Koech, MP
6. Hon. Sakwa John Bunyasi, MP
7. Hon. Abdullswamad Shariff, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Lati Lelelit, MP
10. Hon. Eng. Shadrack Manga, MP
11. Hon. Ronald Tonui, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Sakaja Johnson, MP
14. Hon. Shakeel Shabbir Ahmed, MP
15. Hon. Sumra Irshadali, MP
16. Hon. Tiras Ngahu, MP
17. Hon. Dennis Waweru, MP

**IN ATTENDANCE**

1. Mr. Robert Nyaga - Fiscal Analyst
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Daniel Mwanja - Fiscal Analyst
5. Catherine Gati - Fiscal Analyst
6. Mr. Abdinassir Yusuf - Fiscal Analyst

**MIN.NO. DCF/170/2014                      PRELIMINARIES**

The Chairperson called the meeting to order at 10. 45 am followed by a word of prayer from Hon. Andrew Toboso, MP.

**MIN.NO. DCF/171/2014:                      PRE-PUBLICATION SCRUTINY OF CENTRAL BANK  
(AMENDMENT) BILL, 2014**

The Parliamentary Budget Office presented an analysis of the above legislative proposal highlighting the following:

1. The Bill is geared towards empowering the youths and low income earners in Kenya to access government securities by establishing lower denominations and electronic transactions in issuance of public debt instruments. This will be done by amending section 45 of the Central Act.
2. Both the Commission on Implementation of the Constitution and the Kenya Law Reform Commission confirmed that the Bill does not concern County Government and should be considered in line with the provisions of Article 109(3) of the Constitution. The two bodies further confirmed that the Bill does not violate the provisions of the Constitution.

**Committee recommendation**

The Bill should be published.

**MIN.NO. DCF/172/2014:                      CONSIDERATION OF BUSINESS REGISTRATION  
SERVICE BILL, 2014**

**The Parliamentary Budget Office presented the following to the Committee regarding the Bill:**

**I. OVERVIEW OF THE BILL**

1. The principle object of the Bill is to establish a state corporation responsible for business registration services through transformation of the presently existing Department of Registrar-General into Business Registration Services. This is to ensure effective administration of laws relating to the incorporation, registration and management of companies, partnerships, and firms.
2. The Bill provides for the following:
  - (i.) Clause 1 provides for the short title of the Act. This should be amended to be cited as the Business Registration Service Act 2014 and not 2013.

- (ii.) Clause 3 (1) proposes creation of a new Parastatal in the name of Business Registration Service
- (iii.) The Service responsibilities include: implementation of policies, laws and other matters relating to registration of companies, partnerships, and firms, individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, trade unions, chattels transfers, adoptions, coat of arms, books and newspapers, the National Flag, emblems and names.
- (iv.) The Acts to be administered by the Service are: Companies Act (Cap 486); Partnership Act No 16 of 2012; Limited Liability Partnership Act, No. 42 of 2011; the Societies Act (Cap. 108); College of Arms Act (Cap. 98); Registration of Business Names Act (Cap 499); Hire Purchase Act (Cap. 507); Books and Newspapers Act (Cap. 111); Bankruptcy Act (Cap. 53); Chattels Transfers Act (Cap. 28); National Flag, Emblems and Names Act (Cap. 99)
- (v.) Clause 5 proposes the Board of the Service composed of ten (10) members including the Chairperson and the Registrar-General who shall be an ex-officio member.
- (vi.) Clause 17 proposes a position of the Registrar-General as the Chief Executive officer of the Service.

## II. KEY OBSERVATIONS

3. The following are some of the key observations from the Bill in its present form and content:
- (i.) Transformation of a government administrative unit into a state corporation
  - (ii.) No clear provision that ensures that business community/investors and professional bodies such as ICPAK are represented in the Board
  - (iii.) The knowledge and expertise required for Members of the Board is too general.
  - (iv.) The remuneration and terms and conditions of members of the Board is solely determined by the Cabinet Secretary
  - (v.) The qualifications of the Registrar-General are too general and restrictive
  - (vi.) The annual report of the Board is to be submitted to the National Assembly.

## III. ANALYSIS OF PERTINENT ISSUES IN THE BILL

4. The following are pertinent issues from the Bill:

- (a) **Compliance to Pre-legislative Scrutiny:-** The Bill in its present form and content fits the definition of a money bill as provided for in Article 114 (3) of the Constitution. The Bill therefore ought to have undergone pre-publication scrutiny in accordance with Standing Order 114.
- (b) **Budgetary Implications:** - The transformation of the presently existing Department of Registrar-General into a semi autonomous government agency will occasion additional expenditures to the government. The estimated additional funds required are provided in table 1.
- (c) **Representation of Business and Professional Bodies in the Board:** There is need to have an express provision in the Bill that ensures that business community/investors and professional bodies are represented in the Board.
- (d) **Knowledge and Experience of the Board Members:** The knowledge and expertise required for Members of the Board is too general. The Bill should make clear provisions on academic, professional qualifications and set minimum of experience in particular field without the generalities.
- (e) **Remuneration and Terms & Conditions of the Board:** - The remuneration and terms and conditions of members of the Board should be determined by the Cabinet Secretary in consultation with Salaries and Remuneration Commission.
- (f) **Qualifications and Experience for Registrar-General:** - The qualifications of the Registrar-General are too general and restrictive. The professional qualifications should not be restricted to advocates of the High Court only.
- (g) **Annual Report of the Board:** - This report should be submitted to both the National Assembly and the Senate. Trade development and regulation is a function that touches on the County Governments as provided for in the constitution.

#### IV. SITUATION ANALYSIS

##### (a) The Department of Registrar- General, Kenya

- 5. The Department of Registrar-General is presently one of the Departments under the Office of the Attorney-General.
- 6. The Department is headed by Registrar-General and is mandated to provide the following functions: *Registration of Companies; Registration of Business Names; Registration of Chattels Mortgage; Registration of Charges and Debentures; Registration of Societies and Hire Purchase Agreements; Registration of Books and Newspapers; Licensing of*

*Hire Purchase Business; Registration of Building Societies and Coat of Arms; Registration of Marriages; Licensing of Church Ministers to perform Marriages; Registration of Adoptions; Official Receiver; Administration of Copyrights; and Registration of Trade Unions.*

**(b) Business Licences (e-Registry)**

7. Business Licensing e-Registry is one of several integrated and mutually supportive measures being implemented by the Government to establish a better business regulatory environment in Kenya. The other measures include: (i) *the comprehensive review of all business licenses conducted in 2006-7, (ii) the establishment of a Business Regulatory Reform Unit, (iii) the development of a medium-term Regulatory Reform Strategy, which will frame continued regulatory streamlining and capacity-building, as well as (iv) a Regulatory Impact Assessment (RIA) system to assess the costs and benefits of new regulations.*
8. The Government established a business licence (e-Registry's) in 2011 with a role to increasing transparency and reducing regulatory risks to businesses by providing easy access to exhaustive information about business licenses and permits as well as the formalities businesses must comply with to obtain them.
9. The e-Registry is managed by a team in the Business Regulatory Reform Unit (BRRU) within the National Treasury. The team is charged with: (i) keeping the content of the e-Registry database up to date by liaising with regulators across government and (ii) responding to e-mail and telephone enquiries from users seeking clarification or further information about specific licenses.
10. The e-Registry database currently contains information on over 400 business licenses and permits.

**(c) Doing Business Rankings**

11. According to World Bank's Doing Business Ranking 2014 which ranked 189 economies on the ease of doing business, Kenya slide six places down to rank at position 134 compared to position 128 in 2013 in the ease of starting a business; it fell three positions down to rank 166 compared to 163 in 2013 on the ease of getting electricity; slide two places down to position 163 compared to position 161 in 2013 on the ease of registering property; improved five place up to position 166 compared to 171 in 2012 on ease of paying taxes; ranked favorably at position 13 but also slide from position 11 in 2013 on the ease of getting credit.

## **V. INTERNATIONAL COMPARATIVE ANALYSIS**

**(a) Rwanda Development Board (RDB)**

12. The Office of the Registrar-General (ORG) in Rwanda was established in 2008 as a Division under the Investment Promotion and Implementation Department of the Rwanda Development Board (RDB).
13. The Office is tasked with facilitating investment through developing and maintaining a world class efficient business register and promoting a business friendly regulatory framework. Particular responsibility of the office include to initiate, implement and follow up the activities relating to registering and striking from the register; businesses, secured transactions and intellectual property rights.
14. The Rwanda Development Board (RDB) was set up as a one stop shop for all investors by bringing together all the government agencies responsible for the entire investor experience under one roof. This includes key agencies responsible for business registration, investment promotion, environmental clearances, privatization and specialist agencies which support the priority sectors of ICT and tourism as well as SMEs and human capacity development in the private sector.
15. The RDB is **independent and influential** and reports directly to the President and is guided by a Board that includes all the key Ministers (e.g., finance, commerce, infrastructure, agriculture). The RDB is built with **global expertise** and modeled on international best practice examples of Singapore and Costa Rica.

(b) Singapore Economic Development Board (EDB)

16. Singapore is one of the leading 'ease of doing business' jurisdictions in the world. Accounting and Corporate Regulatory Authority (ACRA) was formed as a statutory board on 1<sup>st</sup> April 2004, following the merger of the then Registry of Companies and Businesses (RCB), and the Public Accountants' Board (PAB).
17. The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business entities and public accountants in Singapore. ACRA also plays the role of a facilitator for the development of business entities and the public accountancy profession.
18. The mission of ACRA is to provide a responsive and trusted regulatory environment for businesses and public accountants. ACRA's role is to achieve synergies between the monitoring of corporate compliance with disclosure requirements and regulation of public accountants performing statutory audit.
19. Singapore Economic Development Board (EDB) was established as the lead government agency for planning and executing strategies to enhance Singapore's position as a global business centre. Singapore's solution then was to develop its export-oriented industries, as EDB opened its first overseas centres in Hong Kong

