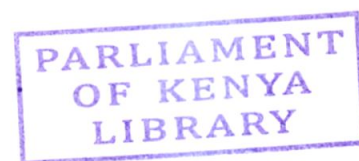


REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION 2018

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE STATUTE LAW MISCELLANEOUS AMENDMENTS BILL, 2018 (NATIONAL
ASSEMBLY BILL NO. 12)

CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI

JUNE, 2018

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ABBREVIATIONS

AML	–	Anti Money Laundering
ARA	–	Asset Recovery Agency
CFT	–	Counter Financing of Terrorism
FATF	-	Financial Action Task Force
KRA	-	Kenya Revenue Authority
POCAMLA	-	Proceeds of Crime and Money laundering Act, 2009

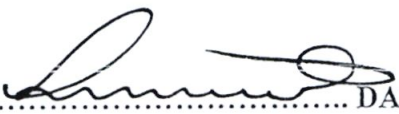
CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings for the consideration of the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.12). The Bill was read a first time on 18th April 2018 and subsequently committed to the Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to among other Statutes, amend the Kenya Post Office and Savings Bank Act (Cap 493), the Kenya Revenue Authority 1995 (No. 2 of 1995), Privatization (No.2 of 2005), Proceeds of Crime and Anti- Money Laundering Act, 2009 (No. 9 of 2009) and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 No.8 of 2015.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Governments Retirement Scheme Bill, 2018.

The Committee is grateful 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 the National Treasury and all the other stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

SIGNED.......... DATE.....27/6/18.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

EXECUTIVE SUMMARY

The Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.12) was published on 10th April, 2018. The Bill was read a first time on 18th April 2018. Given the fact that the Bill was containing raft of amendments to several statutes, the Speaker directed the Liaison Committee to determine which Committee will consider which aspect of the Bill. The Departmental Committees were expected to process the amendments of the respective Statutes the fall within their purview.

As far as the Departmental Committee on Finance and National Planning is concerned, the Bill was seeking to amend Kenya Post Office and Savings Bank Act (Cap 493), the Kenya Revenue Authority 1995 (No. 2 of 1995), the Privatization Act (No.2 of 2005), Proceeds of Crime and Anti- Money Laundering Act, 2009 (No. 9 of 2009) and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 No.8 of 2015.

In processing the Bill, the Clerk of the National Assembly placed advertisements in the Daily Nation and Standard Newspapers on 4th May, 2018 inviting comments from the public by pursuant to Article 118 of the Constitution. At the time of consideration, the Committee had not received any memoranda submitted relating to the Bills under its consideration. In view of the above, the Committee resolved to engage the National Treasury to seek for further clarification on the import of the particular amendments.

In summary, the amendments to the Kenya Post Office and Savings Bank Act (Cap 493), were seeking to provide for that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration in place of the Minister. It is worth noting that the Act came into force in 1978 and was last reviewed/amended in 2009 hence the usage of the term Minister.

Additionally, the amendment to the KRA Act, 1995 relates to the Board of Directors at the Kenya Revenue Authority. The first amendment proposes that the Commissioner General shall be an ex-officio member of the Board. The second one relates to the introduction of the procedure for appointment of the Commissioner General as being competitive recruitment by the Board and the Cabinet Secretary to appoint upon approval by the National Assembly. Finally, the amendment proposes the qualifications and competencies of the persons to be considered for the position of the Commissioner General.

Regarding amendments to the Privatization (No.2 of 2005), the Bill proposes to amend section 23 of the Privatization Act, 2005, to give power to the Cabinet Secretary to direct the Privatization Commission to

implement a proposal for privatization once it is approved by Cabinet. It also requires the Cabinet Secretary to submit annual reports on implementation of approved proposals to the National Assembly.

In relation to the Proceeds of Crime and Anti- Money Laundering Act, 2009 (No. 9 of 2009), the Bill proposes to include in the definition of designated non-financial businesses/professions to include employees of accountants in professional firms, advocates, notaries and other legal practitioners in professional firms as well as trust and company service providers. Subsequently, these persons have been obligated to report to the ARA, any information required for the performance of its functions, which may come into their possession in the course of their duties.

Finally, the amendment to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 seeks to amend the Act to make a minor change in the First Schedule to include office and office equipments as the additional retirement benefits extended to retired Speaker of the National Assembly or the Senate, the Deputy Chief Justice or the Chief Justice.

1.0 ESTABLISHMENT OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

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

1.1 MANDATE OF THE COMMITTEE

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

1. The National Treasury and Ministry of Planning
2. Ministry of Devolution and ASAL
3. The Commission on Revenue Allocation
4. Office of the Controller of Budget
5. Salaries and Remuneration Commission
6. Office of the Auditor General

1.2 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning comprises of the following Members:-

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MP
4. The Hon. Alfred W. Sambu, MP
5. The Hon. Dr. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir Ahmed, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP

1.3 COMMITTEE SECRETARIAT

- | | |
|------------------------|------------------------------------|
| 2. Ms. Leah W. Mwaura | - First Clerk Assistant/Lead Clerk |
| 3. Ms. Laureen Wesonga | - Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - Fiscal Analyst I |
| 5. Ms. Lynette Otieno | - Legal Counsel II |
| 6. Mr. Chelang'a Maiyo | - Research & Policy Analyst III |

2.0 CONSIDERATION OF THE STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO.12)

2.1 BACKGROUND INFORMATION

The Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.12) seeks to among other Statutes, amend the Kenya Post Office and Savings Bank Act (Cap 493), the Kenya Revenue Authority 1995 (No. 2 of 1995) Privatization Act (No.2 of 2005), Proceeds of Crime and Anti- Money Laundering Act, 2009 (No. 9 of 2009) and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 No.8 of 2015.

Pursuant to Article 118 of the Constitution, the National Assembly placed an advertisement in the Daily Nation and Standard newspapers on 4th May, 2018 requesting for comments from the general public and or interested individuals/ organizations. By the close of the deadline and by the time the Committee was considering the Bill, the Committee had not received any written memoranda. In view of the above, the Committee resolved to request the National Treasury to submit to their written submission on the import of the amendments as contained in the Bill.

2.2 SUMMARY OF THE BILL

In summary, the amendments to the Kenya Post Office and Savings Bank Act (Cap 493), were seeking to provide for that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration in place of the Minister. It is worth noting that the Act came into force in 1978 and was last reviewed/ amended in 2009 hence the usage of the term Minister.

Additionally, the amendment to the KRA Act, 1995 relates to the Board of Directors at the Kenya Revenue Authority. The first amendment proposes that the Commissioner General shall be an ex-officio member of the Board. The second one relates to the introduction of the procedure for appointment of the Commissioner General as being competitive recruitment by the Board and the Cabinet Secretary to appoint upon approval by the National Assembly. Finally, the amendment proposes the qualifications and competencies of the persons to be considered for the position of the Commissioner General.

Regarding amendments to the Privatization (No.2 of 2005), the Bill proposes to amend section 23 of the Privatization Act, 2005, to give power to the Cabinet Secretary to direct the Privatization Commission to

implement a proposal for privatization once it is approved by Cabinet. It also requires the Cabinet Secretary to submit annual reports on implementation of approved proposals to the National Assembly.

In relation to the Proceeds of Crime and Anti- Money Laundering Act, 2009(No. 9 of 2009), the Bill proposes to include in the definition of designated non-financial businesses/professions to include employees of accountants in professional firms, advocates, notaries and other legal practitioners in professional firms as well as trust and company service providers. Subsequently, these persons have been obligated to report to the Asset Recovery Agency, any information required for the performance of its functions, which may come into their possession in the course of their duties.

The amendment to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 seeks to amend the Act to make a minor change in the First Schedule to include office and office equipments as the additional retirement benefits extended to retired Speaker of the National Assembly or the Senate, the Deputy Chief Justice or the Chief Justice. The Principal Act provides for granting of pensions and other retirement benefits to the Deputy President, persons who have served as Prime Minister, Vice President, Speaker, Deputy Chief Justice and Chief Justice after 1993.

Currently, they are provided with two drivers, a personal assistant, a secretary, a house keeper, a senior support staff, gardener, cleaner, two amend security on request, diplomatic passport with spouse, maintenance of vehicles and access to VIP lounges at the airports.

3.0 SUBMISSION BY THE NATIONAL TREASURY

The National Treasury appeared before the Committee on Tuesday 12th June, 2018 to make their submissions regarding the amendments to the Statute Law Misc. Amendments Bill, 2018 (No. 12 of 2018). They submitted as follows: -

3.1 THE KENYA POST OFFICE SAVINGS BANK ACT

THAT, the Bill was seeking to amend the Kenya Post Office Savings Bank Act (CAP 493) to change the appointing Authority of the arbitrators from Cabinet Secretary to the Registrar Arbitration should be dropped. They were not in support of the amendment since the appointing authority was the Cabinet Secretary, who consults with the authority before making appointments. They aver that the amendment did not put any consideration for consultations with the Cabinet Secretary before the appointment of an arbitrator.

3.2 THE KENYA REVENUE AUTHORITY ACT

THAT, the National Treasury was not in support of the proposed amendment to the KRA Act, 1995 which was seeking to amend section 6 (2) (b), section 11(1) and insert of new sections; provisions relating to the appointment process of the Commissioner General. The National Treasury requested that the amendment be withdrawn to await a complete overhaul of the KRA Act to align it to the Constitution, 2010.

3.3 THE PRIVATIZATION ACT

THAT, the Bill was proposing to amend Section 23(3) of the Privatization Act by deleting and substituting therefor the following new subsection-

(3) Upon approval of the proposal under subsection (2), the Cabinet Secretary shall communicate the same to the Commission and direct the Commission to commence implementation.

(4) Delete and substitute therefor the following new subsection-

(4) The Cabinet Secretary shall compile and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarizing the status of implementation of each proposal approved under subsection (2) in that year.

Justification:

THAT, National Treasury was in support the amendment since it was seeking to streamline the privatization process and address the undue delays in the implementation of the programme. The amendment would further provide flexibility and empower the Commission to restructure the proposals as need be. The oversight role of Parliament would be maintained through the annual consolidated report

3.4 THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT

A. Section 2

THAT, the National Treasury was in support of the Bill proposing to amend the POCAMLA as follows: -

Delete paragraph (e) of the definition of the expression “designated non-financial businesses or professionals” and substitute therefor the following new paragraph-

(e) accountants who are sole practitioners, partners or employees within professional firms;

Insert the following new paragraphs immediately after paragraph (f)-

(fa) advocates, notaries and other independent legal professions who are sole practitioners, partners or employees within professional firms;

(fb) trust and company service providers.

Justification:

THAT, the Financial Action Task Force (FATF) had identified lawyers, notaries & other independent legal professionals and trust and company service providers as amongst the category of professions that can be abused for money laundering and terrorism financing purposes. The FATF accordingly requires this category of persons to be designated as amongst reporting entities to whom AML/CFT obligations apply. The definition of “*designated non-financial businesses or professions*” under the Proceeds of Crime and Money laundering Act, 2009 (POCAMLA) does not include these two category of persons. The proposed amendment was therefore intended to align the POCAMLA with the requirements of the Financial Action Task Force (FATF) and international best practices which require advocates, notaries and other independent legal professions as well as trust and company service providers to be reporting entities in specified circumstances.

The Financial Action Task Force (FATF) is an international inter-governmental body whose mandate is to set and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF has developed international standards referred to as the Forty Recommendations on Anti-Money Laundering, Combating the Financing of Terrorism and Proliferation. These Recommendations are universally recognized as the international standards for anti-money laundering and counter the financing of terrorism (AML/CFT).

2. Section 18 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) provides as follows with regard to advocate client relationship:-

“18. Client advocate relationship

(1) Notwithstanding the provisions of section 17, nothing in this Act shall affect or be deemed to affect the relationship between an advocate and his client with regard to communication of privileged information between the advocate and the client.

(2) The provisions of subsection (1) shall only apply in connection with the giving of advice to the client in the course and for purposes of the professional employment of the advocate or in connection and for the purpose of any legal proceedings on behalf of the client.

(3) Notwithstanding any other law, a Judge of the High Court may, on application being made to him in relation to an investigation under this Act, order an advocate to disclose information available to him in respect of any transaction or dealing relating to the matter under investigation.

(4) Nothing in subsection (3) shall require an advocate to comply with an order under that subsection to the extent that such compliance would be in breach of subsection (2).”

B. Application of reporting obligations

Section 48

THAT, the National Treasury the Bill is proposing to amend Section 48 of the POCAMLA as follows: -

Delete and substitute therefor the following new section-

48. The reporting obligations under this Part shall apply to:

(a) advocates, notaries, other independent legal professionals and accountants when preparing or carrying out transactions for their clients in the following situations—

- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies;
- (v) creation, operation or management of buying and selling of business entities or legal arrangements.

(b) a trust or company services provider not otherwise covered elsewhere in this Act, which as a business, provides any of the following services to third parties—

- (i) acting as a formation agent of legal persons;
- (ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (iii) providing a registered office, business address or accommodation; correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- (iv) acting as, or arranging for another person to act as, a trustee of an express trust;
- (v) acting as, or arranging for another person to act as, a nominee shareholder for another person.

Justification:

THAT, the proposed amendment was intended to indicate when the reporting obligations apply to advocates, notaries, other independent legal professionals, accountants and to trust and company services providers.

3.5 THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND OTHER DESIGNATED STATE OFFICERS) ACT,

On the proposed amendments to the Retirement Benefits (Deputy President and Other Designated State Officers) Act, the National Treasury observed that the amendments being proposed required costing to

determine the implication before being passed. The National Treasury was therefore not in support of the proposed amendment pending the costing.

4.0 COMMITTEE'S STAGE AMENDMENTS

Having considered the Bill and engagement with the National Treasury, the Committee made the following amendments:-

SCHEDULE

THAT the Schedule to the Bill be amended—

(1) in the proposed amendments to section 14 of the Kenya Post Office Savings Bank Act by inserting the words “in consultation with the Cabinet Secretary” immediately after the word “Registrar”.

(2) in the proposed amendments to the Kenya Revenue Authority Act by-

(a) deleting the proposed new subsection (1A) and substituting therefor the following new subsection—

(1A) The Commissioner-General shall be recruited through a competitive process by the Board and appointed by the President, with the approval of the National Assembly.

(b) inserting the word “preferably” in paragraph (d) of the proposed subsection (1D) and by deleting the words “in relevant course as the Board may determine”;

(c) deleting the proposed paragraph (f) of the proposed subsection (1D) and substituting therefor the following new paragraph-

(f) is not directly or indirectly or through representatives engaged as a director, employee, officer or shareholder of a clearing and forwarding company, insurance, brokerage or insurance agency or in any other sector of public revenue as relates to the Authority;

- (c) inserting the following new subsection (1E) immediately after the proposed subsection (1D)-

(1E) A person may be disqualified from appointment as a Commissioner-General, if the person's spouse or dependant child is or becomes a Director, employee, officer or shareholder of a company or business which does business related to the functions of the Authority or with the Authority.

- (3) in the proposed amendments to the Privatization Act, 2005 by—

(a) deleting the proposed amendment to section 23 (3);

(b) deleting the proposed amendment to subsection (4) and substituting therefor the following new subsection-

(5) The Cabinet Secretary shall compile and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarizing the status of implementation of each proposal approved under subsection (2) in that year.

(6) Upon laying before the National Assembly, the report under sub section (5) shall be referred to the relevant committee.

5.0 ANNEXURE

Minutes

Adoption schedule

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE OF THE REPORT ON STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILLS NO. 12)

DATE: 26TH JUNE, 2018

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. ALFRED W. SAMBU, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	

**MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 12TH JUNE, 2018 IN
THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 09.00 AM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Purity W. Ngirici, MP
9. Hon. Samuel Atandi, MP
10. Hon. Andrew A. Okuome, MP
11. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Francis K. Kimani, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto | – | Principal Legal Counsel |
| 3. Mr. Josephat Motonu | - | Fiscal Analyst I |
| 4. Mr. Collins Mahamba | – | Audio Officer |
| 5. Mr. John Njoro | – | Serjeant-At-Arms |

NATIONAL TREASURY

1. Hon. Nelson Gaichuhie – Chief Administrative Secretary (CAS)
2. Mr. Eric Korir - Director
3. Mr. Elijah Nyamamba – CSMO
4. Mr. Calleb Ogot – Senior Deputy Director
5. Mr. Shem Nyakutu – PS/DOP
6. Mr. Geoffrey A. Kibanda – SAD / Pensions
7. Mr. Lazarus Kesizi – Manager Research & Strategy
8. Ms. Isabella Kogei –Parliamentary Liaison Officer
9. Mr. Barrack O Amollo – Deputy Secretary
10. Mr. Martin S.O Gumo – Senior Deputy Director

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Bills - Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12) and Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.13)**
 - (i) Briefing by the Secretariat
 - (ii) Meeting with the National Treasury to consider the Statute Law (Miscellaneous Amendments) Bill, 2018 seeking to amend:-
 - a) The Kenya Post Office and Savings Bank Act (Cap 493), ;
 - b) The Kenya Revenue Authority Act (No. 2 of 1995) ; and
 - c) The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No. 8 of 2015).
 - (iii) Meeting with the National Treasury and Public Procurement Regulatory Authority (PPRA) on the Amendment to the Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015) as contained in the Statute Law (Miscellaneous Amendments), (No. 2) Bill, 2018
11. Adjournment

MIN.NO.NA/F&NP/2018/186:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:30 a.m with prayer from the Chairperson.

MIN.NO.NA/F&NP/2018/187: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/188: BRIEFING ON STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO. 12) AND STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO.13)

The Committee was briefed as follows regarding the above. **THAT,**

- (i) The Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12) and Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.13) propose to amend nine (9) Acts of Parliaments within the purview of the Committee on Finance and National Planning. The Acts include the Kenya Post Office Savings Bank Act; the Kenya Revenue Authority Act; the Privatization Act; the Proceeds of Crime and Anti-Money Laundering Act; Retirement Benefits (Deputy President and Other Designated State Officers); the Betting, Gaming and Lotteries Act; the Statistics Act; the Public Private Partnerships Act and the Public Procurement and Asset Disposal Act.
- (ii) The two Bills contain many and substantive amendments which may negate the philosophical principle behind the introduction of the “omnibus” Bill in addition to undermining the institution of the Legislature. The Statute Law (Miscellaneous Amendments) Bill should ideally contain minor and consequential amendments.
- (iii) **The Kenya Post Office Savings Bank Act** -.The proposed amendment seeks to change the appointing authority of the arbitrators from the Cabinet Secretary to the, now established, Registrar of the Nairobi Centre for International Arbitration. However, it may be prudent to provide for consultation between the Cabinet Secretary and the Registrar, prior to such appointments.
- (iv) **The Kenya Revenue Authority Act** - The proposed amendments relates to the Board of Directors at the Kenya Revenue Authority. The first amendment proposes that the Commissioner General shall be an ex-officio member of the Board. The second one relates to the introduction of the procedure for appointment of the Commissioner General as being competitive recruitment by the Board and the Cabinet Secretary to appoint upon approval by the National Assembly. Finally, the amendment proposes the qualifications and competencies of the persons to be considered for the position of the Commissioner General. The Committee should reconsider the qualification for appointment for Commissioner General to provide for an advanced degree and also drop some qualifications such as supply chain that may not be so relevant to the position.
- (v) **The Privatization Act** - The proposed amendment seeks to empower the Cabinet Secretary communicate the decision of the Cabinet on privatization and direct the implementation of the same. In addition, the Cabinet Secretary is required to submit a consolidated report on the status of the implementation of each privatization proposal to

the National Assembly within 4 months after the end of a fiscal year. The Committee was requested to consider whether it is necessary for the National Assembly to be involved even much early in the privatization process rather than waiting at the tail end to receive reports on the status of the implementation of the privatization proposals that have hitherto been approved by the Cabinet.

(vi) **The Proceeds of Crime and anti-Money Laundering Act** - The proposed amendment intends to include in the definition of designated non financial businesses/professions: employees of accountants in professional firms; advocates, notaries and other legal practitioners in professional firms as well as trust and company service providers. Subsequently, these persons have been obligated to report to the Asset Recovery Agency, any information required for the performance of its functions, which may come into their possession in the course of their duties. This measure is likely aimed at solidifying the fight against proceeds of crime.

(vii) **The Retirement Benefits (Deputy President and Other Designated State Officers) Act**, - The proposed amendment was seeking to provide additional benefit of *office and office equipment* to the class of state officers (Speaker of the National Assembly, Speaker of the Senate, Deputy Chief Justice and Chief Justice) upon retirement. This additional benefit seems to have financial implication and it may have been prudent to go through the pre-publication scrutiny in view of Article 114 of the Constitution.

(viii) **The Public Procurement and Asset Disposal Act** - The proposed amendments was seeking to:

- a) Introduce a new definition of local contractor.
- b) Open up the membership of procurement professionals from the Kenya Institute of Supplies Management to also cover other supply chain professional bodies.
- c) Have both the National Treasury and the Public Procurement Regulatory Authority to have a shared function of training and capacity development of persons involved in procurement and asset disposal.
- d) Have the function of maintaining the state portal on procurement and asset disposal has been shifted from the Public Procurement Regulatory Authority to the National Treasury.
- e) Amend Section 43 of the Act which provides for Inspection, Assessment and Reviews of contracts, procurement and asset disposal proceedings, that aimed at improving access to information by persons authorized by the Authority and in the event entry to a premise by such authorized persons is curtailed, then a search warrant may be sort.
- f) Amend Section 53 on Procurement and Asset Disposal Planning to introduce new provisions in relation to publishing and publicizing the approved procurement plans as invitation to treat on the procuring entity website as well as the National Treasury's state tender portal. This will facilitate ease access to information and endeavour to promote transparency in procurement.

- g) Amend Section 54 on procurement pricing and requirement in order not to split of contract relates to the application of “arms length” pricing by obtaining information from market surveys in order to inform placing of orders or decision making by the procurement awarding authority. This may go a long way to ensure the procurement process is efficient and effective to safeguard public resources.
- h) Reduce the overall procurement period that have hitherto hindered swift conclusion of the procurement process, thus leading to slow delivery of public goods and services, the timelines have been proposed for change.
- i) The proposed amendment to Section 139(4) which provides for amendments or Variations to Contracts seeks to remove the period in the current requirement that prohibits variation of contract within 12 months from the date of signing the contract, subject to price variation, not more than 15% of goods and services, not more than 20% for works and not more than 25% on overall contract price variation. The timeline of 12 months safeguards the predictability and integrity of the contract such that its removal seems to introduce a potential exception to Section 139(3) on contract price variation.
- j) Section 167 is proposed to be amended to exempt women, youth and persons with disability from payment of a refundable deposit of 10% or more of the contract price when applying for the administrative review of the procurement process. This is intended to protect the vulnerable persons in society who may not be in a position to raise the requisite procurement review fees, as long as the exemption is guarded against any possible abuse or misuse.

The Committee observed that the Bills contain major amendments and hence in the strict sense of miscellaneous they did not qualify; majority of the amendment have far reaching implications if passed.

MIN.NO.NA/F&NP/2018/189: MEETING WITH THE NATIONAL TREASURY ON THE PROPOSED MISCELEANOUS AMENDMENTS

The Chairperson welcomed the officials from the National Treasury thereafter introductions were done.

The National Treasury team was led by the Chief Administrative Secretary, Hon. Nelson Gaichuhie. He conveyed the apologies of the Principal Secretary who could not attend the meeting due to engagements relating to the Budget Speech for 2018. The Chairperson called upon him to make submission relating to the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12) and the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.13).

- (i) In regards to the Kenya Post Office Savings Bank Act (CAP 493), the National Treasury noted that they were not in support of the amendment which was seeking to change the appointing Authority of the arbitrators from Cabinet Secretary to the Registrar Arbitration They proposed that the amendment be dropped. They noted that the appointing authority was the Cabinet Secretary, who consults with the authority before making appointments. They further noted that the amendment did not take into consideration any consultations with the Cabinet Secretary.
- (ii) Kenya Revenue Act- The National Treasury stated that they were not in support of the amendment seeking to amend section 6 (2) (b), section 11(1) and insertion of new sections: provisions relating to the appointment process of the Commissioner General. The overall effect of the amendment was to introduce the role of Parliament in the appointment process. The amendment was also introducing the minimum qualifications of the Commissioner General. The National Treasury requested that the amendment be withdrawn to await a complete overhaul of the KRA Act to align it to the Constitution, 2010.
- (iii) With regards to the proposed amendments to the Privatization Act seeking to amend Section 23(3) of the Principal Act by deleting and substituting therefor the following new subsection-
 - (3) Upon approval of the proposal under subsection (2), the Cabinet Secretary shall communicate the same to the Commission and direct the Commission to commence implementation.
 - (4) Delete and substitute therefor the following new subsection-
 - (4) The Cabinet Secretary shall compile and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarizing the status of implementation of each proposal approved under subsection (2) in that year.

The National Treasury supported the amendment since it was seeking to streamline the privatization process and address the undue delays in the implementation of the programme. The National Treasury further noted that the amendment would provide flexibility and empower the Commission to restructure the proposals as need be. The oversight role of Parliament will be maintained through the annual consolidated report

- (iv) In relation to the Proceeds of Crime and Anti- Money Laundering Act, 2009(No. 9 of 2009), the Bill proposes to include in the definition of designated non financial businesses/professions to include employees of accountants in professional firms, advocates, notaries and other legal practitioners in professional firms as well as trust and company service providers. Subsequently, these persons have been obligated to report to the Asset Recovery Agency, any information required for the performance of its functions, which may come into their possession in the course of their duties.

The National Treasury observed that the Financial Action Task Force (FATF) had identified lawyers, notaries & other independent legal professionals and trust and company service providers as amongst the category of professions that could be abused for money laundering and terrorism financing purposes. The FATF accordingly required that this category of persons be designated as amongst reporting entities to whom AML/CFT obligations apply.

- (v) On the proposed amendments to the Retirement Benefits (Deputy President and Other Designated State Officers) Act, the National Treasury observed that the amendments being proposed required costing to determine the implication before being passed. The National Treasury was therefore not in support of the proposed amendment pending the costing.

MIN.NO.NA/F&NP/2018/190: MEETING WITH THE NATIONAL TREASURY AND THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

The Chairperson invited the officials from the National Treasury and Public Procurement Regulatory Authority (PPRA). They made the presentation regarding the amendments to the Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015) as annexed to the minutes. They also gave justification for each of the proposed amendments.

MIN.NO.NA/F&NP/2018/191: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.45pm. The next meeting will be held on 14th June, 2018 at 10.00 am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED



DATE.....

27/6/18

**MINUTES OF THE 39TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 14TH JUNE, 2018 IN
THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 11.00 AM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Purity W. Ngirici, MP
9. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Dr. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Lydia H. Mizighi, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Stanley M. Muthama, MP
9. Hon. Andrew A. Okuome, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto | – | Principal Legal Counsel |
| 3. Mr. Josephat Motonu | – | Fiscal Analyst I |
| 4. Mr. John Njoro | – | Serjeant-At-Arms |
| 5. Mr. Collins Mahamba | – | Audio Officer |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Bills - Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12) and Statute Law (Misc. Amendments) Bill, 2018**
 - (i) Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018 seeking to amend:-
 - a) The Kenya Post Office and Savings Bank Act (Cap 493), ;
 - b) The Kenya Revenue Authority Act (No. 2 of 1995) ; and
 - c) The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No. 8 of 2015).
 - d) Privatization Act (No.2.of 2005)
 - e) The Proceeds of Crime and Anti-money Laundering Act (No. 9 of 2009)
 - (ii) Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No.13) seeking to amend:-
 - a) Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015)
 - b) Statistics Act
11. Adjournment

MIN.NO.NA/F&NP/2018/192: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 11:20 a.m with prayer from the Chairperson.

MIN.NO.NA/F&NP/2018/193: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/194: CONSIDERATION OF THE STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO. 12)

The Committee considered the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12). The Bill was seeking to amend among other Acts of Parliament, the Kenya Post Office and Savings Bank Act (Cap 493), the Kenya Revenue Authority Act (No. 2 of 1995), the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No. 8 of 2015),

the Privatization Act (No.2.of 2005) and the Proceeds of Crime and Anti-money Laundering Act (No. 9 of 2009).

The Committee went through the Bill clause by clause and proposed the following amendments to the Kenya Post Office Savings Bank, Kenya Revenue Authority Act and the Privatization Act, 2005 as follows:-

THAT the Schedule to the Bill be amended—

- (1) in the proposed amendments to section 14 of the **Kenya Post Office Savings Bank** Act by inserting the words “in consultation with the Cabinet Secretary” immediately after the word “Registrar”.

Justification: The proposed amendment as contained in the Bill seeks to ensure that the appointment of an arbitrator is done by the Registrar of the Nairobi Centre for International Arbitration. The Committee proposes a further amendment to ensure that the Registrar consults the CS National Treasury in the appointment of an arbitrator.

- (2) in the proposed amendments to the **Kenya Revenue Authority Act** by-

- (a) inserting the word “preferably” in paragraph (d) of the proposed subsection (1D) and by deleting the words “in relevant course as the Board may determine”;

Justification: The proposed amendment seeks to ensure that the law does not deliberately lock out other professions so that it also gives opportunity for applicants for the position of Commissioner General who possess qualifications in other fields apart from the ones proposed by the Bill. In so doing, candidates who may not necessarily have the qualifications as stated in the Bill but have excellent management and leadership skills can also be eligible for appointment.

- (b) deleting the proposed paragraph (f) of the proposed subsection (1D) and substituting therefor the following new paragraph-

- (f) is not directly or indirectly or through representatives engaged as a director , employee, officer or shareholder of a clearing and forwarding company, insurance, brokerage or insurance agency or in any other sector of public revenue as relates to the Authority;

Justification: The Committee proposed that the provision be further qualified to provide that disqualification in the case of direct / indirect conflict only applies in the case of institution/ companies dealing directly with KRA.

- (c) inserting the following new subsection (1E) immediately after the proposed subsection (1D)-

(1E) A person may be disqualified from appointment as a Commissioner-General, if the person’s spouse or dependent child is or becomes a Director,

employee, officer or shareholder of a company or business which does business related to the functions of the Authority or with the Authority.

Justification: The Committee proposed that the provision be further qualified to provide that disqualification in the case of person's spouse or dependent child only applies in the case of institution/ companies dealing directly with KRA.

(3) in the proposed amendments to the **Privatization Act, 2005** by—

(a) deleting the proposed amendment to section 23 (3);

Justification: The Committee proposed the deletion of the amendment as it was proposing to remove the post facto role of Parliament in the privatization process.

(b) deleting the proposed amendment to subsection (4) and substituting therefor the following new subsection-

(5) The Cabinet Secretary shall compile and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarizing the status of implementation of each proposal approved under subsection (2) in that year.

Justification: The Committee's amendment is meant to ensure that the Cabinet Secretary compiles and submit to the National Assembly, a consolidated report summarizing the status of implementation of all privatization proposals. This is to be done at the not later than four months after the end of each financial year. This amendment underscores the role of Parliament during the implementation phase of every privatization process.

(6) Upon laying before the National Assembly, the report under sub section (5) shall be referred to the relevant committee.

Justification: The amendment seeks to ensure that the report are considered by the relevant Committee of the House.

There were no proposed amendment to the Proceeds of Crime and Anti-money Laundering Act (No. 9 of 2009) and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No. 8 of 2015).

The Committee deferred consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No.13) to the next sitting.

MIN.NO.NA/F&NP/2018/195: ADJOURNMENT

The meeting was adjourned at 1.50 p.m until Tuesday 19th June, 2018 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED



DATE

26/6/18

**MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 19TH JUNE, 2018 IN
THE MINI CHAMBER, COUNTY HALL AT 10.00 AM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MP
3. Hon. David M. Mboni, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Joshua C. Kandie, MP
6. Hon. Samuel Atandi, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Shakeel Shabbir Ahmed, MP

APOLOGY

1. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
2. Hon. Abdul Rahim Dawood, MP
3. Hon. Alfred Sambu, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Dr. Enoch Kibunguchy, MP
6. Hon. Lydia H. Mizighi, MP
7. Hon. Mohamed A. Mohamed, MP
8. Hon. Stanley M. Muthama, MP
9. Hon. Andrew A. Okuome, MP
10. Hon. Purity W. Ngirici, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto | – | Principal Legal Counsel |
| 3. Mr. Josephat Motonu | – | Fiscal Analyst I |
| 4. Mr. John Njoro | – | Serjeant-At-Arms |
| 5. Mr. Collins Mahamba | – | Audio Officer |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Bills**
 1. **Adoption of the Report on the Consideration of the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.12):-**
 2. **Clause by Clause consideration of the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No.13):-**
 - a) Statistics Act (No. 4 of 2006)
 - b) Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015) as contained in the Statute Law (Miscellaneous Amendments), (No. 2) Bill, 2018
11. Adjournment

MIN.NO.NA/F&NP/2018/195: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:30 a.m with prayer from the Chairperson.

MIN.NO.NA/F&NP/2018/196: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/197: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO. 12)

The Committee considered the Report on the Statute Law (Misc. Amendments) Bill, 2018 (National Assembly Bill No. 12). The Committee adopted the amendments as proposed.

MIN.NO.NA/F&NP/2018/198: CONSIDERATION OF THE STATUTE LAW (MISC. AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO. 13)

The Committee went through the Bill clause by clause and proposed the following amendments.

THAT the Schedule to the Bill be amended—

(1) in the proposed amendments to the Statistics Act by —

(a) Inserting the following new amendment—

s.5(3) Insert the word “preferably” immediately after the word “degree”;

(b) in the proposed section 6(1) (d) by deleting the words “and ensuring discipline among the staff”;

(c) Inserting the following new amendment—

s.8 (1) Delete and substitute thereof the following new subsection-

The Director-General shall be recruited through a competitive process by the Board and appointed by the President, with the approval of the National Assembly.

(d) by deleting the following proposed amendment to section 8(2) –

“Delete the expression “an advanced degree in a relevant field as specified in section 5(3)” and substitute therefor the expression “a degree in statistics, economics, demography or mathematics”.

(e) in the proposed new section 8A by-

(i) in paragraph (a) by deleting the word “postgraduate”;

(ii) deleting paragraph (c) and substituting thereof the following new paragraph-

(c) is a registered Certified Public Secretary in good standing with the Institute;

Consideration of the Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015) was deferred to the next sitting.

MIN.NO.NA/F&NP/2018/199: ANY OTHER BUSINESS

The Committee noted the need to engage the National Treasury on the Integrated Financial Management System (IFMIS). The Committee cited several failures that the system had encountered.

MIN.NO.NA/F&NP/2018/200: ADJOURNMENT

The meeting was adjourned at 1.50 p.m until Tuesday 19th June, 2018 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED



DATE

26/6/18