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EIGHTH PARLIAMENT - FOURTH SESSION

DEPARTMENTAL COMMITTEE

ON FINANCE, PLANNING AND TRADE

REPORT

ON

THE CENTRAL DEPOSITORY BILL, 2000

PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2000

PREFACE

Mr. Speaker Sir, on behalf of Members of the Departmental Committee No. F on Finance, Planning and Trade and in pursuance of provisions of Standing Order 101(3), I wish to present to the House the Report and Recommendations of the Committee on the Central Depository Bill, 2000.

Some of the functions of the Departmental Committee pursuant to provisions of Standing Order 151 are:-

- (c) to study and review all legislation after First Reading, subject to the exemptions under Standing Order 101(4);
- (e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they deem necessary, and as may be referred to them by the House or a Minister; and
- (f) to make reports and recommendations to the House as often as possible, including recommendation on proposed legislation.

Mr. Speaker Sir, the Committee is comprised of the following Members:-

The Hon. Simeon M. Mkalla, M.P. - Chairman
The Hon. Jimmy N. Angwenyi, M.P.
The Hon. Onesmus Mboko, M.P.
The Hon. Wycliffe W. Osundwa, M.P.
The Hon. John N. Michuki, M.P.
The Hon. Peter O. Odoyo, M.P.
The Hon. David Mwiraria, M.P.
The Hon. Soita Shitanda, M.P.
The Hon. Adan Keynan, M.P.
The Hon. Mohamed A. Galgalo, M.P.
The Hon. Adan M. Noor, M.P.

CENTRAL DEPOSITORY SYSTEM

The Bill seeks an Act of Parliament to facilitate the establishment, operation and regulation of Central Depository System for the Capital Market.

The mix is between credit based and capital based financial systems. A credit based system relates to banking where savers earn interest and borrowers pay interest. Capital based system articulates equity ownership where enterprises raise financing by selling shares while rewarding the subscribers with capital gains and dividends from enterprise performance.

Mr. Speaker Sir, there is urgent need to establish a central depository system for the Capital Market to enable rapid transactions. The system is of special importance both to foreign and local investors because it allows unfettered transactions which boost domestic savings. The CDs can therefore be a vehicle for attracting the inflow of both direct foreign investment and short term investment.

THE OBJECTIVES OF CENTRAL DEPOSITORY SYSTEM

Mr. Speaker Sir, the objectives of the proposed Central Depository System are:-

- (i) to develop a faster and more efficient settlement system;
- (ii) to facilitate safe custody of securities;
- (iii) to achieve electronic transfer of securities and funds by eliminating physical movement of documents; and
- (iv) to facilitate the attainment of the Company's mission statement.

The duties of a Central Depository are clearly stipulated in Clause 8(1) in page 45 of the Bill.

THE IMPACT OF CENTRAL DEPOSITORY SYSTEM

The Impact of the CDs will be as follows:-

- (a) it will contribute to poverty eradication through the creation of additional employment in the country. The expected increase in the turn-over at the Nairobi Stock Exchange will make current employers to increase the number of investor agents, securities dealers, clerks and investment analysts;
- (b) it will facilitate inflow of foreign investments;
- (c) it will provide for electronic transfer in transactions. This means there will be no manual transfer of shares, thus making the market more efficient; and
- (d) the system will reduce costs involved in the transfer of shares since allocation and distribution of shares will be done electronically.

THE CENTRAL DEPOSITORIES STAKEHOLDERS

Mr. Speaker Sir, the proposed names of Stakeholders and their respective % shareholdings are as follows:-

The Stock Brokers	-	30%
Nairobi Stock Exchange	-	25%
City Bank	-	10%
Jubilee Insurance Limited	-	10%
Kenya Commercial Bank Limited	-	10%
International Finance Corporation	-	10%
Apollo Insurance Company Limited	-	5%

THE CENTRAL DEPOSITORY BILL, 2000

The republished Bill is the same as the Central Depository Bill, 1999 which was tabled before the House in the Third Session of the Eighth Parliament. The new Bill was tabled in the House on April 13, 2000 and referred to our Committee on the same day.

The Committee held two sittings to deliberate on the Bill. On the first sitting the Committee had the opportunity to discuss the Bill with the Minister for Finance as well as with the Capital Market Authority. During the second sitting the Committee discussed proposed amendments from the Capital Market Authority on the CDs rules.

RECOMMENDATIONS OF THE COMMITTEE AND PROPOSED AMENDMENTS AGREED ON BY THE MINISTER FOR FINANCE

Mr. Speaker Sir, the deliberations and recommendations of the Committee have been incorporated in the Bill. For example Members had suggested a Sub-Clause to be added to Clause 13 to read.

"A Securities Exchange shall in respect of Securities Exchange give rules of all eligible Securities prescribed by it to be immobilized with the Central Depository, in not less than three dailies of national circulation one of which shall be in Kiswahili and two in English languages once in a week for three consecutive weeks."

The Minister has incorporated this recommendation in Clause 67 of the Bill.

Clauses 50,51(2), 53,60(3) where the Committee had proposed to increase the penalties to Kshs.5 million or 5 years imprisonment or both have also been incorporated in the Bill.

Mr. Speaker Sir, there are other areas which the Committee had recommended for the consideration of the Minister. One such area was the absence of Central Depository rules. The Committee benefited from the submission of the CDs rules by Capital Market Authority. The Committee deliberated on the proposals from the Authority which they adopted but recommended that the Minister in consultation with stakeholders formulate the CDs rules.

CONCLUSION

I wish to commend the report to the House and hope that Members will find it of use in their deliberation on the Central Depository Bill.

Last but not least Mr. Speaker Sir, I would like to sincerely thank the Members of the Committee and the staff of the National Assembly for their cooperation and dedication in pursuing the objectives for which the Committee was established. I feel indebted to their invaluable contribution and commitment which has ensured the timely production of this report.

SIGNED:



**The Hon. Simeon M. Mkalla, M.P.,
Chairman,
Departmental Committee No. F on Finance,
Planning and Trade.**

DATE:

26TH APRIL 2000

MINUTES OF THE SEVENTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE NO. F ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM SECOND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY, APRIL 17, 2000 AT 2.30 P.M.

PRESENT: The following Members of the Committee were present:-

The Hon. Simeon M. Mkalla, M.P. - Chairman
The Hon. Onesmus Mboko, M.P.
The Hon. Jimmy N. Angwenyi, M.P.
The Hon John Michuki, M.P.
The Hon. Soita Shitanda, M.P.
The Hon. Mohamed A. Galgalo, M.P.
The Hon. Adan Keynan, M.P.

ABSENT: The following Members of the Committee were absent:-

The Hon. Wycliffe W. Osundwa, M.P.
The Hon. Adan Noor, M.P.
The Hon. David Mwiraria, M.P.
The Hon. Peter O. Odoyo, M.P.

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. David K. Ziah - Second Clerk Assistant

TREASURY

The Hon. Chris Okemo - Minister for Finance
Mr. Barrack O. Amollo - Under Secretary

CAPITAL MARKET AUTHORITY

Mr. Paul Melly - Chief Executive
Mrs. Catherine Kola - Head of Enforcement and
Administration

MIN. NO.330/2000 DELIBERATIONS ON THE CENTRAL DEPOSITORIES BILL, 2000

The Committee expressed its fears that the establishment of the Central Depository System will involve shifting from the use of

paper money to use of transfers done electronically.

It was the feeling of the Committee that the situation will encourage fraudulent practices. It was therefore suggested that adequate safeguard be introduced to curb any fraudulent incident.

Responding to the Member's fears above, the Minister and his officers stated as follows:

- (i) That, enough surveillance measures and safeguards have been put in place to check and detect those who cheat. Some of the measures are:-
 - (a) A holder of any security will be made aware of the sale of his/her share and that he will have to authorize.
 - (b) Shares will be verified before the sale.
 - (c) The registered owner of the shares will be issued with a statement of account by the CDS which will be used by the owner of the shares for identification.
- (ii) That, the system will reduce delays in payment of shares sold. While in the old system it took 14 days for the shareholder to get payment for shares sold at the Nairobi Stock Exchange under the CDS the owner of the shares will be paid before the of ownership transfer is done.
- (iii) That, the CDS system will start by immobilizing all shares and then dematerialize the ownership. With time the system will evolve and be trusted.

The Committee went through the minutes on the Central Depositories Bill deliberated on in 1999.

(i) **Memorandum of objects and reason**

Adopted after explanations on how the system works.

(ii) **Preliminaries**

Part I - adopted

Part II Clause 3(1) - adopted

Clause 13(2) - It was resolved that the issue be referred to the Attorney General's Office to clarify the following issues:

(i) Whether it was proper for the Bill to refer to the CDS rules which are yet to be formulated.

(ii) Whether the CDS could be given the responsibility of making these rules without involving Parliament or the Minister in charge of Finance.

Clause 14 to 21 - adopted

Clause 22 (1&2) - securities withdrawn from a Central Depository shall not be traded. This is a safeguard put in place to check fraudulent practices.

Clause 22(3) to 27 - adopted

Clause 28 - in a brief explanation, the Committee was informed that the Unit Trust Act has to be amended. Unit Trust means Collective Investments.

Clause 29 to 30 - adopted

Clause 31 to 48 - adopted

Clauses 50, 51(2)

53, 60(3) - were to be amended to make the penalty 5 million or 5 years imprisonment or both

Clauses 49, 50(a),
51, 52, 54, 55,56,
57, 58,60 (1,2,4,5),
61 to 66 - were adopted

MIN. NO.331/2000 DATE FOR NEXT MEETING

The Committee scheduled sittings as follows:-

- (i) Thursday, April 20, 2000 at 10.00 a.m. -
Deliberate on the Capital Market Authority
(Amendment) Bill, 2000.
- (ii) Tuesday, april 25, 2000 at 10.00 a.m. -
Meeting the Minister for Finance.

MIN. NO.332/2000 ADJOURNMENT

And the time being thirty minutes past Five O'clock the
Chairman adjourned the sitting upto April 25, 2000.

Signed
(CHAIRMAN)

Date

MINUTES OF THE SEVENTY EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE NO. F ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS ON THURSDAY, APRIL 20, 2000 AT 10.0 A.M.

PRESENT: The following Members of the Committee were present:-

The Hon. Simeon M. Mkalla, M.P. - Chairman
The Hon. Soita Shitanda, M.P.
The Hon. Peter O. Odoyo, M.P.

ABSENT: The following Members of the Committee were absent:-

The Hon. Wycliffe W. Osundwa, M.P.
The Hon. John N. Michuki, M.P.
The Hon. Onesmus Mboko, M.P.

ABSENT WITHOUT APOLOGY:

The Hon. Adan. Noor, M.P.
The Hon. David Mwiraria, M.P.
The Hon. Mohamed A. Galgalo, M.P.
The Hon. Jimmy N. Angwenyi, M.P.
The Hon. Adan Keynan, M.P.

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. David K. Ziah - Second Clerk Assistant

MIN. NO.333/2000 CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The minutes of the Seventy-Fourth, Seventy-Fifth, Seventy-sixth and Seventy-Seventh were confirmed with some amendments.

MIN. NO.334/2000 CONSIDERATIONS OF THE CENTRAL DEPOSITORIES BILL, 2000

PAPER LAID

A paper on proposals of amendments to the Central Depository Bill, 2000 from Capital Markets Authority was laid before the Committee for its deliberation and comments.

The Committee discussed and adopted the following proposals:-

Page 34 **Definition of CDS rules**

CDS rules means operational and procedural rules issued by the Central depository for the purpose of ensuring orderliness, efficiency and security in the operation of the Central depository as approved by the Authority.

The Committee respected its concern that the Minister for Finance ought to have a hand in the formulation of the CDS rules.

Page 44 **New Provision for Clause 6**

Changes in Central depository rules

- 6(1) The rules of an approved central depository, in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without the prior approval of the Authority.
- (2) Where the board of directors of an approved central depository wishes to amend its rules, it shall forward the amendments to the Authority for approval.
- (3) The Authority shall, after hearing from the Central depository, and within thirty days of receipt of a notice under subsection(2) give written notice to the central depository stating whether such amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Authority shall give reasons for such disallowance.
- (5) Where an approved central depository proposes to alter any particulars already furnished or undergoes or intends to undergo a change from its state specified in the application for approval it shall inform the Authority and obtain its prior consent before such alteration or change is affected.

The existing clause 53 will be itemized as 53(1) and new sub items(2),(3) and (4) included

- 53(1) A person who contravenes or fails to comply with any of the provisions of this Act or of any rules made there under commits an offence under this Act and where no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years.
- (2) In addition to the penalties provided in this Act, any person guilty of an offence under this Act shall be liable to pay compensation to any person who suffers loss by the first named person.
- (3) The amount of compensation for which a person is liable under subsection (2), is-
- (a) The amount of the loss sustained by the person claiming the compensation;
 - or
 - (b) in the event the harm has been done on the market as a whole, the liability shall be the amount of illegal gains received or the loss averted as a result of the illegal action as determined by the court.
- (4) To the extent that a person found guilty of an offence under subsection(2) profiled by that offence but those harmed cannot reasonable and practicably be determined, the payment under subsection(2) shall be made to the compensation Fund established under the Capital Markets Authority Act (485A).

The Committee went through the Bill Clause by Clause.

Title of the Bill	Adopted
Clause 1 to 3	Adopted
Page 93 clause 4 part ivc	The Committee wished to be informed how this subsection harmonises with the company's Act.
Page 94 part (d)	The Committee wanted to be clarified on the issue of collective investment scheme.
Page 95 to 98	Adopted
Page 99 paragraph 2	The Committee needs clarification on the term "investment - company" appearing in the second paragraph.
Page 100 to 101	Adopted
Page 102 clause 8(a)	The Committee asked if there was any proposal to protect the tenure of office of the Chief Executive.
Page 103 clause 9 c, f(1)	The Committee wondered whether this subsection does not contradict the Banking Act.
Page 104 f(ii)	The Committee asked what linkage there was between the Retirement Benefits Authority and the Capital Markets Authority regarding the licensing of investment companies.
Page 105 to 107	Adopted
Page 108 clause 12	(i) The Committee asked why e-commerce was not included in this list. (ii) The Committee asked whether these amendments have been harmonized with the Banking Act.
Page 109 to 125	Adopted

Page 126(i) a,b	<p>The Committee required the following:-</p> <ul style="list-style-type: none"> -Explanation on how a body corporate can be jailed. -Explanation on how the fine figures of 5 million and 2.5 million were reached in (a) and (b) respectively. -What will happen if the fraud is over 5 million.
Page 127 clause 29(1b)	The Committee wished to be informed how the Authority will vet licensing requirements.
Page 128 to 130	Adopted
Page 131(6)	<p>The Committee wished to be explained whether this meant that the statutory manager will issue two reports.</p> <p>The Committee proposed that the statutory manager should give monthly reports.</p>
Page 132	Adopted
Page 133 Clause 32 (d)	Delete the word "two" and insert there in the word "four".
Page 134	The Committee asked for the quorum of the Tribunal. It proposed 9 to constitute the quorum.
Page 135 to 137	Adopted
Page 138	The Committee felt that the Chairman of the tribunal be appointed by the Minister in Consultation with the Chief Justice.
Page 139	Adopted
Page 140(27)	Should appear in Page 134 as part (e).
Page 141 subsection 3	The Committee proposed one year instead of six months but is asking for a commend from the Ministry.

Page 142 (37)

The Committee asked for a clarification on why there should be a conflict between the Capital Market Authority Act and other existing Acts.

Page 142 (35)

The Committee wished to be explained the procedure in repealing an Act of Parliament.

MIN.NO.336/2000

DATE OF NEXT MEETING

The Committee resolved to meet on April 25, 2000 at 10.00 a.m.

MIN.NO.337/2000

ADJOURNMENT

And the time being thirty minutes past two O'clock the Chairman adjourned the sitting.

Confirmed
(CHAIRMAN

DATE