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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**REPORT ON**  
**THE COMPANIES BILL, 2015**

Clerks Chambers,  
National Assembly,  
Parliament Buildings,  
Nairobi

June, 2015

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## 1. PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Justice and Legal Affairs, 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 the Companies Bill, 2015.

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- a) 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;*
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) To study and review all legislation referred to it;*
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and*
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;

- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

### 1.1. Committee Membership

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

- 1. Hon. Samuel Chepkong'a, M.P. – Chairperson
- 2. Hon. Priscilla Nyokabi, M.P. – Vice Chairperson
- 3. Hon. Njoroge Baiya, M.P.
- 4. Hon. Muriithi Waiganjo, M.P.
- 5. Hon. Ndirangu Waihenya, M.P.
- 6. Hon. Florence Kajuju, M.P.
- 7. Hon. Kang'ata Irungu, M.P.
- 8. Hon. Benson Mutura, M.P.
- 9. Hon. John Njoroge Chege, M.P.
- 10. Hon. William Cheptumo, M.P.
- 11. Hon. Mohamed Abdi Haji, M.P.
- 12. Hon. Sammy Koech, M.P.
- 13. Hon. Moses Cheboi, M.P.
- 14. Hon. Paul Bii, M.P.
- 15. Hon. Charles Gimose, M.P.
- 16. Hon. Johanna Ng'eno, MP.
- 17. Hon. Boniface Otsiula, M.P.
- 18. Hon. David Ouma, M.P.
- 19. Hon. Neto Agostinho, M.P.
- 20. Hon. Kaluma Peter, M.P.
- 21. Hon. Fatuma Ibrahim Ali, M.P.



22. Hon. Ben Momanyi Orari, M.P.
23. Hon. Tom J. Kajwang', M.P.
24. Hon. (Bishop) Mutua Mutemi, M.P
25. Hon. Olago Aluoch, M.P.
26. Hon. (Dr) Christine Oduor Ombaka, M.P.
27. Hon. Munuve G. Mati, M.P.
28. Hon. Mwamkale William Kamoti, M.P.
29. Hon. James Bett, M.P.

### **1.3. First Reading of the Companies Bill, 2015**

The Companies Bill, 2015 was read for the first time on 16<sup>th</sup> June, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with Standing Order 127 (1) which states as follows:-

*“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”*

It is worth noting that this Bill had previously been read for the first time on 30th April, 2014 and committed to the Committee for scrutiny where several stakeholders made representations. Close to 950 amendments were agreed on. It would have been cumbersome for the Committee to move 950 amendments on the floor of the House and for this reason, the Majority Leader on 18th February, 2015 based on a report of the Committee withdrew the Bill for the purposes of incorporating the amendments and reintroducing it. This was to enable the House conveniently deal with the Bill during Committee stage.

### **1.4. Public participation in the consideration of the Bill**

Standing Order 127(3) states as follows:-

*“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”*

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 9<sup>th</sup> June, 2015 to make representations on the Bills. The following obliged:-

- (i) Capital Markets Authority;
- (ii) Institute of Certified Public Accountants of Kenya (ICPAK);
- (iii) Institute of Certified Public Secretaries of Kenya (ICPSK);
- (iv) Anjarwalla & Khanna Advocates;
- (v) Ms. Eunice Kitche Ongadi;
- (vi) Ms. Stella Nyamu;
- (vii) Ms. Livingston Associates;
- (viii) Cs. Enid K. Muriuki,
- (ix) Cs. Kathryne Maundu;
- (x) Cs. Winniefred Jumba;
- (xi) PKF Kenya Accountants and Business Advisors;
- (xii) Cs. Jane Mwangangi;
- (xiii) Cs. Emily Mugonyi;
- (xiv) Mr. Pius M. Kamau,
- (xv) Ms. Felistas M. Musyoka;
- (xvi) Mr. Douglas Kilumbi;
- (xvii) Mr. Jeremiah N. Karanja;
- (xviii) Julius Malia Kyulu;
- (xix) Cs. John K. Mbugu,
- (xx) Ms. Chebet Koske;
- (xxi) John Omondi Gwada;

(xxii) Ms. Wanja Nyaga;

(xxiii) Ms. Emily Kajuju

All their representations have been taken into account while arriving at the proposed amendments on the Bill. The memoranda they submitted are annexed hereto as appendix 2.

#### **1.5 Sittings of the Committee and adoption of report**

The Committee held a retreat on 26<sup>th</sup> and 27<sup>th</sup> June, 2015 at Serena Hotel in Mombasa where it considered memoranda received from the public and agreed on amendments to be made on the Bill. The Committee then by majority membership adopted its report on 30th June, 2015 at 4.30 p.m. at sitting held in Committee Room 9, Main Parliament Building. There was no dissenting voice to the adoption of the report. Minutes of the Committee's sitting adopting the report are annexed hereto as appendix 1.

#### **1.6. Acknowledgement**

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly which provided overall guidance and technical support without which its work would not have been possible.

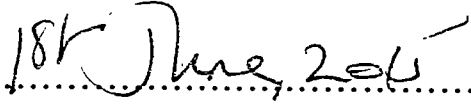
**Hon. Speaker Sir,**

On behalf of the Committee, I now wish to table this report in the House.

SIGNED.....

Hon. Samuel Chepkong'a, MP  
(Vice Chairperson)

Departmental Committee on Justice and Legal Affairs

DATE.....

## **2. BACKGROUND**

The objectives of the Bill are to facilitate commerce, industry and other socio-economic activities by enabling one or more natural persons to incorporate as legal entities with perpetual succession, with or without limited liability, and to provide for the regulation of those entities in the public interest, and in particular in the interest of their members and creditors.

The aim of the Bill is to develop a modern company law to support a competitive economy in a coherent and comprehensive form. The Bill seeks to consolidate the law relating to the incorporation, registration, operation and management of companies and the registration, operation and management of foreign companies that carry on business in Kenya.

The Bill has taken into consideration the current trends on globalization and regional integration with particular reference to the East Africa Community and reflects the present day circumstances of carrying on business including modern patterns of regulation and ownership.

In view of the fact that the Bill had been read for the first time and later withdrawn for incorporation of amendments, republication and reintroduction, it became a revised and reference has been made to it in this report as '*the revised Bill*'.

## **3. CONSIDERATION OF PUBLIC MEMORANDA**

Out of the several public memoranda received and considered, the Committee found it necessary to invite the following to make submissions before it because their memoranda raised substantive issues:-

- i)* The Institute of Certified Public Secretaries of Kenya (ICPSK) generally on clauses touching on company secretary and in particular clause 244 of the revised Companies Bill, 2015 which provides that private companies are required to have a secretary only if they have a paid up capital of five million shillings or more;
- ii)* The Capital Markets Authority;
- iii)* Anjarwalla & Khanna Advocates; and
- iv)* Institute of Certified Public Secretaries of Kenya (ICPAK).

### 3.1. Submissions by Individual Members of the Institute of Certified Public Secretaries of Kenya (ICPSK)

3.1.1. The Committee considered all the representation by individual members of the Institute of Certified Public Secretaries of Kenya (ICPSK) and noted that their memoranda raised issues on clause 244 of the revised Companies Bill, 2015.

3.1.2. The Committee noted that the members of the ICPSK made representations on three issues, namely:

- i) Company secretaries and proposal to make it a requirement for all companies to have a secretary (Clause 244 and generally PART XII of the Companies Bill, 2015);
- ii) Definition of small company;
- iii) Clause 705 of the Companies Bill, 2015

3.1.3. Clause 244 of the Bill provides that “*A private company is required to have a secretary only if it has a paid up capital of five million shillings or more*”. Members of ICPSK proposed an amendment to clause 244 so as to make it a requirement for all companies to have a secretary. The reasons they gave were as follows:

- i) To promote sound corporate governance requirements;
- ii) In Kenya, almost all of the work that company secretaries handle are for companies with nominal capital of not more than Kshs. 100,000/=;
- iii) Most companies doing well engage professional company secretaries while those that ignore engaging such experts experience mismanagement and risk to collapse;
- iv) The companies with nominal capital of more than 100,000/=, leave alone 1 million or 5 million are very few in number;
- v) A company can hire a full time or part-time secretary depending on its financial ability;
- vi) During the review of the Companies Act of the United Kingdom, there was a proposal that the position of Company Secretary should not be

obligatory for all private companies. The Review Group, however, noted that *issues of corporate governance and compliance were becoming increasingly complex and important*. In light of historically high levels of failure to comply with rudimentary filing obligations on the part of companies, the group noted that it would be a step backward to remove the officer expected to attend to, or at least to be competent to attend to, such obligations. The Review Group therefore recommended that the office of Company Secretary be retained.

3.1.4 Members of ICPSK also proposed that clause 245 be deleted and substituted with the words, *“No person shall qualify for appointment as secretary unless he is qualified under the Certified Public Secretaries of Kenya Act, Chapter 534 of the Laws of Kenya”*. Clause 245 of the Companies Bill, 2015 provides as follows—

*“Every public company is required to have at least one secretary”*.

The justification for ICPSK’s proposed amendment was that it was important that a person appointed as secretary is a trained person and a member of a professional body which regulates his professional conduct as prescribed by law.

3.1.5 They also proposed that reference to the word “Public” throughout PART XII (Company Secretaries) with regard to company secretary be deleted. Their justification for this was in order to remove the connotation that only public companies should have a secretary.

3.1.6 Members of ICPSK also ventilated on the subject of small companies in the Bill. A small company is defined in the Bill as one that meets two of the three criteria, that is, being total annual turnover of less than Kshs. 720 million, net assets of less than Kshs. 360 million and employees numbering less than 50. They proposed that the first two criteria (on annual turnover and net assets) be reconsidered. They stated that few companies in Kenya have a turnover in excess of Kshs. 720 million and assets in excess of Kshs. 360 million with more than 50 employees. They observed that these companies represent the largest of commercial enterprise in Kenya’s economy.



3.1.7 Members of ICPSK finally proposed that a new paragraph (c) be inserted after clause 705(3) (b) as follows—

*“(c) is signed by a director and the company secretary.”*

Therefore, the proposed amendment will be in regard to annual returns of a company to the Registrar.

## 3.2. Submissions by Anjarwalla & Khanna Advocates

3.2.1 The submission by Anjarwalla & Khanna contains comments both on substance and form of the Bill. On the form, it points out errors in the Bill such as wrong cross-referencing, lack of definitions, wrong numbering of provisions and incomplete provisions.

3.2.2 The Committee examined both the substantive issues and matters related to form.

### *a) Substantive issues*

3.2.3 Anjarwalla & Khanna proposed the insertion of new sub clause (4) in clause 58 so as to provide for a penalty for non-compliance with the provision. The proposed new sub clause as follows:

*“(4) If a company fails to comply with the direction issued under sub-section (3), an offence is committed by—*

*(a) the company, and*

*(b) every officer of the company who is in default.*

*(5) A person who commits an offence under this section is liable to a fine not exceeding....and, for continued contravention, a daily default fine not exceeding...”*

3.2.4 They also observed that clause 60 of the Companies Bill, 2015 has excluded the requirement that the Registrar’s directive be in writing. Clause 60 relates to a situation where the Registrar may direct a company to change its name if he/she is of the opinion that false information was given for purposes of registration or an undertaking or assurance to that effect has not been fulfilled or where the company name is misleading as to the nature of activities or is likely to cause harm to members of public. They observed that the Companies Bill, 2014 required that the Registrar’s directive be in writing. *They therefore*

*proposed that clause 60(1) of the Companies Bill, 2015 on the Registrar's directive to a company should be in writing.*

3.2.5 Anjarwalla and Khanna also proposed the following:

a) Amendment of clause 60 in sub clause (5) as follows-

*"(5) Subsection (4) does not have effect if the outcome of an application made to the Court under subsection 61(1) is pending."*

b) Amendment of clause 244(1) on company secretaries. Clause 244(1) of the Companies Bill, 2015 provides, *"A private company is required to have a secretary only if it has a paid up capital of five million shillings or more."* Anjarwalla & Khanna observe that this implies that a private company with a paid up share capital of less than KES 5,000,000/= is not (necessarily) required to have a secretary. They suggested that if it is the intention that a private company with a paid up share capital of KES 5,000,000/= and below should not have a secretary, then it should be clearly set out to avoid ambiguity.

c) Amendment of clause 246(1). They observed that the sub clause appears to apply only to public companies. They proposed an amendment so that private companies with the paid up share capital of five million shillings or more observe the requirement of appointing a secretary. Section 246(1) currently reads:

*"If satisfied that a public company is failing to comply with section 245, the Attorney General may give the company a direction under this section."*

They therefore proposed an amendment to insert the words "or a private company with a paid up share capital of five million or more" immediately after the words "a public company".

d) Amendment of clause 330 of the Bill by inserting the following paragraphs—

*"(a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or*

*(b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company."*

Anjarwalla and Khanna observed that the equivalent section to the clause is found in section 552(1) of the Companies Act, 2006 of the United Kingdom. It provides as follows—

*“Except as permitted by section 553(permitted commission), company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his—*

*(a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or*

*(b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.”*

e) Anjarwalla & Khanna noted that the Companies Bill, 2015 did not have an equivalent section to section 572 of the Companies Act, 2006 of the United Kingdom. Section 572 of the Companies Act, 2006 of the United Kingdom provides as follows—

*“572 Liability for false statement in directors’ statement*

*(1) This section applies in relation to a directors’ statement under section 571 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under subsection (7) of that section.*

*(2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.*

*(3) A person guilty of an offence under this section is liable—*

*(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);*

*(b) on summary conviction—*

*(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);*

*(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both)."*

Therefore, they proposed that, subject to modifications, a similar provision should be inserted after section 252 of the Companies Bill, 2015 with a proposed penalty of imprisonment for a term not exceeding two years or a fine (or both).

- f) Anjarwalla & Khanna noted that section 591 of the Companies Act, 2006 of the United Kingdom Companies Act provides that a company is not prevented from enforcing an undertaking to do work in payment for the shares in a company. Anjarwalla & Khanna proposed that the equivalent section 591 of the Companies Act, 2006 of the United Kingdom should be inserted into the Companies Bill, 2015 with the necessary modifications.

Section 591 of the Companies Act, 2006 of the United Kingdom provides as follows—

*"591 Enforceability of undertakings to do work etc*

*(1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 6.*

*(2) This is without prejudice to section 589 (power of court to grant relief etc in respect of liabilities).*

- g) Amendment of Clause 477 of the Companies Bill, 2015 in sub clause (3) by deleting the words "appropriate national newspaper" and substituting therefor the words "a daily newspaper of nationwide circulation in Kenya".

The justification given by Anjarwalla & Khanna was so as to ensure consistency with existing legislations, notably the Capital Markets Act (Cap 485A and the Transfer of Business Act (Cap 500). They contended that companies are not restricted from doing business anywhere in Kenya hence the proposed amendment takes this into consideration.

h) Deletion of clause 499 of the Companies Bill, 2015 or alternatively, if the clause is not deleted, that:

- (a) the definition of damages be elaborated;
- (b) consideration be given whether to specify a limit of the amount of damages payable; and
- (c) a requirement that damages must be awarded by the Court.

They observed that section 722 of the Companies Act, 2006 of the United Kingdom does not contain a provision for the payment of damages. They also noted that they didn't understand the rationale behind the provision.

i) Amendment of clause 518 by firstly inserting immediately after the words "authorized minimum" the words "in relation to the nominal value of a public company's allotted share capital".

Anjarwalla & Khanna observed that clause 518 of the Companies Bill, 2015 relates to share capital for a public company and provides that for purposes of sections 516 and 517 the "authorized minimum" is six million seven hundred and fifty thousand shillings (Kshs. 6,759,000/=). They noted that it was not clear and they needed clarification on whether "authorized minimum" refers to share capital which is simply authorized or requires this amount to be paid up.

Secondly, an amendment of the figure of Kshs. 6,750,000/= as the authorized minimum. They noted that the amount of KES 6,750,000/= is based on the amount set out in section 763 of the United Kingdom of £50,000 converted at the exchange rate of KES 147=£1. They proposed that the amount should be reconsidered owing to economic disparities between Kenya and the United Kingdom.

j) Insertion of a new clause into the Companies Bill, 2015 to provide for alteration of the minimum share capital requirement by the relevant authority. Anjarwalla & Khanna stated that there was an equivalent section 764 of the Companies Act, 2006 of the United Kingdom which could be inserted into the Bill with the necessary modifications. It provides as follows—

*"764 Power to alter authorized minimum"*

*(1) The Secretary of State may by order—*

*(a) alter the sterling amount of the authorised minimum, and*

*(b) make a corresponding alteration of the prescribed euro equivalent.*

*(2) The amount of the prescribed euro equivalent shall be determined by applying an appropriate spot rate of exchange to the sterling amount and rounding to the nearest 100 euros.*

*(3) An order under this section that increases the authorised minimum may—*

*(a) require a public company having an allotted share capital of which the nominal value is less than the amount specified in the order to—*

*(i) increase that value to not less than that amount, or*

*(ii) re-register as a private company;*

*(b) make provision in connection with any such requirement for any of the matters for which provision is made by this Act relating to—*

*(i) a company's registration, re-registration or change of name,*

*(ii) payment for shares comprised in a company's share capital, and*

*(iii) offers to the public of shares in or debentures of a company, including provision as to the consequences (in criminal law or otherwise) of a failure to comply with any requirement of the order;*

*(c) provide for any provision of the order to come into force on different days for different purposes.*

*(4) An order under this section is subject to affirmative resolution procedure."*

- k) Amendment of clause 520(4) of the Companies Bill, 2015. Anjarwalla & Khanna contended that clause 520(4) of the Bill appears to be erroneous as it suggests that a company can issue redeemable shares only if the already issued shares are all

redeemable. They proposed that sub clause (4) should be amended and reworded as follows:

*“No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.”*

- l) Insertion of a new sub clause 523(2) to provide for exemption of companies to pay stamp duty on the redemption of shares in exchange for new shares. Anjarwalla & Khanna noted that, though omitted in the Companies Bill, 2015, exemption of companies from payment of stamp duty on the redemption of its shares in exchange for new shares is a provision currently under section 60(4) existing Companies Act (Cap 486). Section 60(4) of the Companies Act (Cap 486) provides as follows—

*“60 (4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:*

*Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.”*

- m) Alignment of PART XXIV of the Companies Bill, 2015 on Company Takeovers. Anjarwalla & Khanna proposed that the part needs to be carefully considered as some of the provisions contradict the Capital Markets (Takeovers and Mergers) Regulations, 2002. For instance, the definition of “takeover”, an “associate” and an “offeror” in the Companies Bill 2015 are quite different to the corresponding definitions under the Regulations and the Capital Markets Act.

Also, they noted that several sections overlap with the Capital Markets Act, such as the power of the Authority to make regulations which is similar to section 12 of the Capital Markets Act which gives the Minister power to make regulations pursuant to the Capital Markets Act. The Companies Bill, they



observe, does not provide for the definition of the term “takeover” or the term “merger”. Further, the Competition Act (No. 12 of 2010) uses the term interchangeably.

- n) Amendment of clause 599 of the Companies Bill, 2015 to define the term “Sanctions”.
- o) Make provision for transitional provisions in respect of takeovers pursuant to the Takeovers Regulations.
- p) Amendment of clause 629 of the Companies Bill, 2015 to provide for a defence of a person who acted honestly and that in the circumstances in which the company’s business was carried on the default. They observe that a similar defence is found in a corresponding section 387 in the Companies Act, 2006 of the United Kingdom.
- q) Amendment of clause 631 of the Companies Bill, 2015 to provide for a defence similar to a corresponding section 389 of the Companies Act, 2006 of the United Kingdom.
- r) Amendment of clause 705 of the Companies Bill, 2015 in subclause (3) by inserting a new paragraph (e) requiring that annual returns be signed by the director and the company secretary before filings are made with the Registrar of Companies.
- s) Amendment of clause 715 in order to define “e-money issuer” as has been defined in section 539 of the Companies Act, 2006 of the United Kingdom.
- t) Amendment of clause 983. The clause provides that foreign registered companies are prohibited from carrying on business in any place in Kenya unless they have notified the Registrar of their place of business. Anjarwalla & Khanna contended that this provision is not clear on whether the companies which operate in Kenya through the internet currently will be exempt from the ambit of the Companies Bill, 2015.
- u) Amendment of clause 1010 of the Bill so that precaution should extend to all companies. Clause 1010 states that, “A company that keeps its records otherwise than in bound books shall ensure that adequate precautions are taken-....” Anjarwalla & Khanna suggested that the provision implies that companies that keep their records in bound books are not obligated to take adequate measures to prevent the falsification of their books. Therefore, they proposed that the provision should be amended to read as follows—

*“A company that keeps its records shall ensure that adequate precautions are taken.”*

***b) Matters relating to form in the Bill***

Below is a tabular representation of the clerical errors identified by Anjarwalla & Khanna:

CLAUSE	INACCURACIES	CORRECTIONS
26	Error in cross-referencing (reference to section 7)	The proper reference should be to section 12
62(e)	Repetition of paragraph (e)	Delete paragraph (e)
173(3)	Incorrect cross-reference to section 150	Proper cross-reference to section 168
242(3) (b)	Incorrect cross-reference to section 145	Proper cross-reference to section 144
331	Errors in the paragraphing	Paragraphs to be arranged sequentially
349(5)	Incorrect cross-reference to section 348	Proper cross-reference to section 350
478(2) (a) (i)- (ii)	They incorrectly refer to sections 465(1) and 465(2)	Proper references to sections 477(1) and 477(2) respectively
520(1)	Typographical error of the word 'share'	It should be 'shares'
536(5)(b)(i)	Incorrect cross-reference to section 568	Proper cross-reference to section 566
547(1)	Incorrect cross-reference to section 780	Proper cross-reference to section 536
550	Incorrect numbering; sub clause (8)	The sub clauses should be

	is missing	renumbered sequentially
598	Short title incorrectly refers to section 609	The correction section is 597
607(4)	Incorrect cross-reference to section 618	The correct cross-reference is section 606
618(3)	Incorrect cross-reference to section 611(6)	The correct cross-reference is section 613(6)
655	Incorrect numbering	To be renumbered sequentially
678	Incorrect cross-reference to section 676	The correct cross-reference is section 686
711	Sub clause (4) appears twice	To be renumbered in the proper sequence
715	Incorrect cross-reference to section 551	The correct cross-reference is section 714
744	Incorrect cross-reference to section 269(4)	The correct cross-reference is section 267(4)
763	Incorrect cross-reference to section 764	The correct cross-reference is section 762
829(4)	Incorrect cross-reference to section 841(6) or (8)	The correct cross-reference is section 828(6) or (8)
903(1) & (2)	Incorrect cross-reference to sections 904 and 905	The correct cross-reference is sections 901 and 902
926(1)	Incorrect cross-reference to section 923	The correct cross-reference is section 925
940(4)	Incorrect cross-reference to section 642	The correct cross-reference is section 652

953(2)(a)	Incorrect cross-reference to section 923	The correct cross-reference is section 925
955(4)	Incorrect cross-reference to section 665	The correct cross-reference is section 652
1002	The word “court” is not starting with a capital letter	The word should be capitalized throughout the Bill
1004(11)	Reference to the “Insolvency Act, 2015” which statute has not yet been enacted	Reference be made to “laws relating to insolvency”

### 3.3. Submissions by the leadership of the Institute of Certified Public Secretaries of Kenya (ICPSK)

3.3.1. The Institute of Certified Public Secretaries of Kenya (ICPSK) is established under the Certified Public Secretaries of Kenya Act, Cap. 534 of the Laws of Kenya.

3.3.2. Its membership consists of certified professionals trained in governance, compliance and company secretarial practice.

3.3.3. The Institute made its representations before the Committee on behalf of its members. The issues were as follows:

- i) Amendment of clause 244 of the Companies Bill, 2015 so as to make it a requirement that every company shall have a secretary on a full time or part time basis depending on the needs of the organization. Also, they proposed deletion of clause 244(2)(a)(i), (ii) and (b)(i) and (ii) of the Companies Bill, 2015.

Their justification was that data available from the company's registry shows that very few companies, other than those required by Regulators, are registered with an authorized share capital above Ksh. 100,000. They noted that the company secretary helps the Board to monitor the effectiveness of the company's governance practice as well compliance with the law and the articles and memorandum of association.

- ii) Amendment of clause 245 of the Companies Bill, 2015 by inserting a new sub clause to provide as follows—

*“The secretary shall be qualified in accordance with section 20 of Certified Public Secretaries of Kenya Act, Chapter 534 of the Laws of Kenya.”*

The justification given by ICPSK was that it is important that a person appointed as secretary is a trained person and a member of a professional body which regulates his professional conduct as prescribed by law.

- iii) Amendment of clause 705 in sub clause (3) by inserting a new paragraph (c) as follows—

*“(c) is signed by a director and the secretary”*

The justification given was that it is to ensure that documents filed with the Registrar are accurate and verified by a professional.

- iv) Deletion of all references to the word “public” in regard to the company secretary throughout PART XII (Company Secretaries) of the Bill.

Their justification for this was that the word “public” in reference to secretary has been used throughout PART XII of the Bill to mean that only public companies are required to have a secretary. However, with amendment of clause 244, they suggested, that would require every company to employ services of a secretary, the word “public” in

reference to the secretary will cease to have meaning hence the proposed deletion.

- v) Amendment of clause 771 of the Companies Bill, 2015 by inserting a new sub clause (4) as follows—

*“Every quoted company and every company regulated under an Act of Parliament shall be subjected to a governance audit by a practicing secretary accredited by the Institute of Certified Public Secretaries of Kenya for that purpose”*

Clause 771 provides for corporate governance for quoted companies. The justification for the proposed insertion of a new sub clause by ICPSK was that governance audit will enhance compliance, protect investor funds and therefore attract more investments.

- vi) Amendment of clause 3 (Interpretation provisions) by inserting the definition of the term “secretary” as follows—

*“secretary” means a Certified Secretary as defined under the Certified Public Secretaries of Kenya Act, Cap 534 of the Laws of Kenya and who is appointed by a company to perform the functions of a secretary under this Act.*

The justification given by ICPSK was that this was a crucial definition as the term “secretary” is used throughout the Bill.

- vii) Amendment of clause 3 (Interpretation provisions) by inserting the definition of the term “practicing secretary” as follows—

*“practicing secretary” means a Certified Secretary who is licensed to practice under the Certified Public Secretaries of Kenya Act.*

- viii) Amendment of clause 12 in sub clause (2) (on the memorandum of association) by inserting a new paragraph (c) as follows—

*“(c) authenticated by secretary engaged in the formation of the company.”*

The rationale for this was given by ICPSK as to ensure that documents filed with the Registrar are accurate and verified by a professional.

- ix) Amendment of clause 13 in sub clause (3) to remove agents from the role of registering companies and to vest it in a practicing secretary. Therefore, they propose sub clause (3) to read as follows—

*“The application for registration of a company shall be presented by a practicing secretary who shall include their names and address in the application”.*

ICPSK’s justification for their proposed amendment was that company secretaries are trained and qualified on incorporations and that by making it a requirement for a practicing secretary to present applications for registration of a company, this would ensure that the documents filed with the Registrar are accurate and verified by a professional.

- x) Deletion of the word “public” in clause 16(3) (b) so as to read as follows—

*“(b) in the case of a secretary of a public company, in the company’s register of secretaries;”*

The justification given was that all companies should have a register of secretaries and that this should not be restricted to public companies.

### **3.4. Submissions by the Institute of Certified Public Accountants of Kenya (ICPAK)**

3.4.1. The Institute of Certified Public Accountants of Kenya (ICPAK), a statutory body established under the Accountants’ Act of 1978 has the mandate of developing and regulating the accounting profession in Kenya.

3.4.2. The Institute proposed the following amendments:



#	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	3 (Interpretation of provisions of this Act)	To amend the definition of the term " <i>prescribed financial accounting standards</i> " so that the standard accounting practice will be issued by " <i>a professional body in accounting and finance recognized by law in Kenya</i> "	To expressly mandate the Institute to issue accounting standards in line with its mandate as stipulated under the Accountants Act.
2.	3.	To amend the definition of the term " <i>Sign</i> " from " <i>Sign</i> " includes sign by means of an electronic signature To " <i>Sign</i> " means handwritten, typed or electronic signature	To have a complete definition of "sign" that is precise and clear.
3.	3.	To delete the word " <i>statutory</i> " in the definition of the term " <i>statutory auditor</i> ".	Kenya doesn't have an auditor separate from a statutory auditor as this distinction applies in UK.
4.	3.	To amend the definition of the term " <i>working day</i> " from " <i>working day</i> " means any day that is not a Sunday or a public holiday to " <i>working day</i> " has the meaning assigned to it under the Employment Act.	This should be defined in the employment laws and not the Companies Bill.
5.	CLAUSE 133(4)	To amend the definition of the term " <i>public interest company</i> " by deleting the words " <i>public</i> "	To eliminate any ambiguity, public funds should be defined as public money as defined in the PFM Act

		<i>funds</i> ” and substituting therefor the words “ <i>public money as defined by the Public Finance Management Act as well as regulated financial services</i> ”.	of 2012.
6.	CLAUSE 152(3)	That clause 152 be amended in sub clause (3) by deleting the word “ <i>certified</i> ” and substituting therefor the word “ <i>verified</i> ” so as to: 1. Uphold the independence of the auditor. 2. To leave verification to the Directors.	The auditor should be independent, and this may impact his/her independence as it may be deemed that the auditor is acting in the interest of directors.
7.	CLAUSE 624 & 625	That the clauses be amended so that the monetary thresholds are revised to levels that fairly reflect the size of the Kenya’s economy in comparison to thresholds set by other countries	The capital providers (shareholders and lenders) and the Revenue Authority need reliable financial information from these businesses to assess their performance and tax obligations while the proposed thresholds will make nearly 90% of Kenyan companies exempt from audit. This may negatively impact on the economy.
16	CLAUSE 702(4)	To amend sub clause (4) so as to exempt ICPAK from the prohibition to disclose information.	The specific reference made to ICPAK is important since it is a body mandated by law to regulate the profession.
17	CLAUSE 706 & 707	To insert a new paragraph so as to include in the annual return	This is in order to deal with those masquerading as members of the

		auditor's report on the financial statements/exemption statement, where applicable.	Institute ('quacks') by tightening the auditor report. This will be attained through collaborating with the Registrar to ensure that returns are accompanied with valid report of licensed auditors.
18	CLAUSE 711	<p>Context: The clause provides for exemption of small companies from audit. It lists the conditions such as turnover of not more than 720 million, value of net assets of not more than 360 million shillings.</p> <p><i>Proposed amendment:</i></p> <p>That Clause 711 be amended so as to change:</p> <ul style="list-style-type: none"> <li>▪ turnover from 720 million to <b>5 Million;</b></li> <li>and</li> <li>▪ value of net assets from 360 million to <b>5 Million;</b></li> </ul>	The proposed threshold will stifle businesses and lead to loss of jobs.
19	CLAUSE 712	Amend Clause 712. Public companies should not be exempted from audit.	The capital providers (shareholders and lenders) and the Revenue Authority need reliable financial information from these businesses to assess their performance and tax obligations while the proposed thresholds will make nearly 90% of Kenyan companies exempt from audit.

			This may negatively impact on the economy.
20	CLAUSE 716	That the Clause be deleted. The clause provides that audit of financial statements do not apply to a company for a financial year if it is non-profit-making and its financial statements are subject to audit by the Auditor General.	The clause is ambiguous. Also, the mandate of the Auditor is expressed and the Public Benefit Organizations Act provides for PBOs to be audited by a registered auditor.
21	CLAUSE 725 AND 726	To insert a new clause as follows— For purposes of section 725 and 726, the regulations shall be issued by the Institute of Certified Public Accountants of Kenya  Context: The Clauses relate to the terms on which the company's auditor is appointed.	The body mandated with registration and regulation of auditors is the Institute of Certified Public Accountants. This will ensure that terms of audit engagement align with international standards.
22	CLAUSE 727	Proposal to amend Clause 727(2) by deleting paragraphs (a) and (b) on what the auditor's report should contain. Therefore, That the auditor's report " <i>shall be in the format prescribed by the Institute</i> "	To be in conformity with International standards on auditing and global best practice. Also, changing the Act takes long hence for adaptability; the Institute should have the powers to prescribe such formats.
23	CLAUSE 735	Clause 735 provides that an auditor is required to sign and	Audit being a professional body, a natural person, even in a firm

		<p>date his/her report.</p> <p>The proposed amendment: That Clause 735(2) and (3) be amended so that sub clauses (2) and (3) will read as follows—</p> <p><i>“(2) If the auditor is a firm, the engagement partner responsible for the audit engagement and its performance, and for the auditor’s report that is issued shall sign the report on behalf of the firm.</i></p> <p><i>(3) An auditor who fails to comply with subsection (1), or the engagement partner responsible for the audit engagement and its performance, and for the auditor’s report that is issued.”</i></p>	<p>would be charged with the responsibility of overseeing the performance of the engagement and issuing a report containing the opinion. Accounting regulations provide for an engagement partner and not the managing partner (senior statutory auditor).</p>
24	CLAUSE 736	<p>To delete Clause 736 as “<i>senior statutory auditor</i>” as a term does not exist in Kenya. There are managing partner/senior partner and they are already existent hence no need for the new statutory auditor.</p>	<p>Globally, the profession is structured in a manner such that the engagement partner bears the primary responsibility for the audit subject to the firm’s internal policies and quality controls in place.</p>

25	CLAUSE 752 (to 755)	To amend Clause 752(1) by deleting the term " <i>appropriate audit authority</i> " and substituting therefor the terms " <i>the Institute and the body that regulates the company (where applicable)</i> "	In Kenya, ICPAK is mandated with the regulation of audit practice and as such, the notification should be channeled to the Institute. In addition to notifying the Institute, for PIEs it would add value if the regulator is also notified of the same. The regulator would include CMA, RBA, IRA, CBK and SASRA.
	Clause 768	That it is vague. It is on the effect of liability limitation agreement.	
26	CLAUSE 771	To amend Clause 771(1) to establish an audit committee for each quoted company to be chaired by an independent member of the Board and to have at least one member of the ICPAK of good standing.	The proposed Bill provides significant additional responsibilities on the directors hence the need to ensure that the composition of the committees add value i.e. persons who understand aspects of financial reporting and internal controls of an organization who are able to engage and critically question the report of the independent auditor. The professionalism will also be enhanced in the committees of the Board of quoted companies thus enhancing corporate governance.
27	CLAUSE 773	To amend Clause 773(1) to delete the word " <i>statutory</i> " and to add the requirement of having	To ensure that requirements of the profession are strictly adhered to.

		a valid annual license issued under section 22 of the Accountants Act.	
28	CLAUSE 774(3)	Suggestion: That part of the fine be used to develop the profession through remissions to ICPAK.	The auditors are regulated by ICPAK and that this should be retained in the Companies Bill.
29	CLAUSE 779	To delete Clause 779 which implies that the Cabinet Secretary will admit auditors.	This is unprecedented; regulation of audit profession is country specific. Nowhere in the world does any law allow foreigners into the profession without reference to the local institution mandated to regulate the profession. It contravened the Accountant Act and the best practice all over the world and compliance and it contravened the common market protocol.  The Accountants Act provides for the Registration Committee which is a statutory committee whose members are appointed by the Cabinet Secretary, National Treasury hence he/she is represented.

### 3.5. Submissions by the Capital Markets Authority (CMA)

3.5.1. The Capital Markets Authority, established under the Capital Markets Act, Cap. 485A, has the twin mandate of development and regulation of capital markets in



Kenya. The Authority is also mandated to administer the Central Depositories Act, 2000.

3.5.2. The Authority reviewed both the Companies Bill, 2015 and the Insolvency Bill, 2015 and made the following proposals-

*a) Companies Bill*

- i) That PART XIX (on Public offers by Private and Public Companies) be redrafted to provide clarity that public offers of securities are regulated by the Capital Markets Authority under the Capital Markets Act.
- ii) That the mandate given to the Capital Markets Authority under PART XXIV (Company Takeovers) is wider than the current responsibilities under the Capital Markets Act which restricts the Authority's scope to listed companies.
- iii) That most of the provisions in PART XXIV are very prescriptive and would significantly constrain the Authority's rule making powers under the Part.
- iv) That the role of the Competition Authority in takeovers has not been recognized under PART XXIV.
- v) That there are several definitions that require to be harmonized with those under the Capital Markets Act including terms such as "securities". Also, "traded company" and "quoted company" should read "listed company".
- vi) Deletion of clause 134 of the Bill: The provision requires that two-thirds of the members of the nomination's committee will be representatives of the majority shareholders.

Justification: This negates the principle of independence which is crucial in the constitution of such a key committee of the Board. This is specifically provided for under the subsidiary legislation issued under the Capital Markets Act. Also, there are other key committees of the Board which have not been specified under the Bill including audit committee.

***b) Insolvency Bill***

- i) The Insolvency Bill, 2015 should create a “carve-out” or clear exemption provision in order to ensure that listed securities cannot be available in case such a central depository became insolvent.  
Justification: The Central Depositories Act requires all listed securities to be held by a central depository for purposes of ensuring efficient execution of transactions at a securities exchange. Therefore, these securities are held by the central depository in trust for the beneficiaries who are the shareholders in the listed companies.
- ii) Insertion of sections 43A, 5B, 5C and 5D of the Central Depositories Act No. 38 of 2011 into the Insolvency Bill, 2015. These are key provisions which would require to be stipulated in the primary Insolvency Law for clarity and comprehensiveness of the law.

Section 43A of the Central Depositories Act No. 38 of 2011 provides for matters which cannot be invalidated because of their inconsistency with the law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver. These matters are a market contract; the rules of a central depository relating to the settlement of a market contract; any process or action taken under the Rules of a central depository relating to the settlement of a market contract; a market charge; the default rules of a central depository.

Section 5D of the Central Depositories Act No. 38 of 2011 provides for a requirement for the central depository to submit a report to the Capital Markets Authority, any relevant securities exchange and defaulter to whom the report relates.

Section 5C of the Central Depositories Act No. 38 of 2011 provides for net sum certified by a central depository as payable by or to a defaulter, upon the completion of default measures.

Section 5B of the Central Depositories Act No. 38 of 2011 refers to default process rules in regard to actions which a central depository may take against a central depository agent that has failed, or has become unable or is likely to be unable to meet its obligations.

- iii) That there be a “carve-out” or exemption provision to cater for instances where a trading participant at a securities exchange, for instance a stock-broker, becomes insolvent. The justification for this proposal was that it is important that any securities and any other assets held by such a stockbroker in trust for its clients and proprietary assets held by the stockbroker for purposes of settlement of market transactions are ring-fenced from application by the liquidator of the entity.
- iv) That all securities and funds committed for settlement of market transactions should be ring-fenced to avoid a series of defaults across the capital market.

Justification: A provision excluding availability of such assets to a liquidator mitigates liquidation risk and increases investor confidence in the Kenyan securities market. This is in line with international best standards and ensures progress towards the establishment of the Nairobi International Financial Centre. “Carve-outs” guarantees that funds allocated for settlement of market transactions will not be subject to claw back for payment of general creditors of the firm.

- v) That a “carve-out” or exemption should be provided for in the Insolvency Bill, 2015 to apply to all assets held by entities in a fiduciary capacity on behalf of beneficiaries.

Justification: This is important with the advent of Special Purpose Vehicles (SPVs) required to hold assets on behalf of many beneficiaries for instance in the case of Collective Investment Schemes (CIS), Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS) provided for under the Capital Markets Act, in order to ensure that those assets are not available in case of insolvency of the SPV, which could be a company or Trust or Trustee.

#### 4.0. COMMITTEE'S PROPOSED AMENDMENTS

The Committee proposes the following amendments to the Bill:

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
3	<p>THAT clause 3 of the Companies Bill, 2015 be amended—</p> <p>i) in the definition of the term "<i>prescribed financial accounting standards</i>" by deleting the words "<i>such body or bodies as may be prescribed by the regulations for the purpose of this Act</i>" and substituting therefor the words "<i>a professional body or bodies in accounting and finance recognized by law in Kenya.</i>"</p>	<p>The proposed amendment provides clarity for a professional body or bodies that will issue statements of standard accounting practice. This proposal enriches the definition.</p>
	<p>ii) In the definition of the term "<i>statutory auditor</i>" by deleting the word "<i>statutory</i>"</p>	<p>Kenya, unlike the United Kingdom, doesn't draw a distinction between an auditor and a statutory auditor. The term "<i>statutory auditor</i>" is non-existent in Kenya's legal regime.</p>
	<p>iii) In the definition of the term</p>	<p>A working day should exclude</p>

	<p>“working day” by deleting the definition and substituting therefor the new definition as follows—</p> <p>“working day” means any day from Monday to Friday, other than a public holiday</p>	<p>Saturdays, Sundays and public holidays. The definition had excluded Sundays and public holidays but not Saturdays. Therefore, the proposed new definition excludes Saturdays, Sundays and public holidays.</p>
133	<p>THAT clause 133 of the Companies Bill, 2015 be amended in sub clause (4) in the definition of the term “public interest company” by deleting the words “public funds” appearing at the end of the sub clause and substituting therefore the words “public money as defined by the Public Finance Management Act as well as regulated financial services”.</p>	<p>The Public Finance Management Act defines the term “public money” and this definition needs to be aligned to all other legislations for consistency.</p>
624	<p>THAT clause 624 of the Companies Bill, 2015 be amended in sub clause (3) —</p> <p>i) In paragraph (a) by deleting the words “seven hundred and twenty” and substituting therefor the words “fifty”;</p> <p>ii) In paragraph (b) by deleting the words “three hundred and sixty” and substituting therefor the words “twenty”.</p>	<p>The thresholds for qualifications for small companies of a turnover of not more than seven hundred and twenty million shillings and the value of its net assets of not more than three hundred and sixty are excessive and restrictive to business. Therefore, their reduction will promote businesses particularly for small companies.</p>
625	<p>THAT clause 625 of the Companies Bill, 2015 be amended in sub clause (4)—</p> <p>i) In paragraph (a) by deleting the</p>	<p>The thresholds for qualifications for small companies of a turnover of not</p>

	<p>words “<i>seven hundred and twenty million shillings net or eight hundred and sixty-five million shillings gross</i>” and substituting therefor the words “<i>fifty million shillings</i>”;</p> <p>ii) In paragraph (b) by deleting the words “<i>three hundred and sixty</i>” and substituting therefor the words “<i>twenty</i>”.</p>	<p>more than seven hundred and twenty million shillings and the value of its net assets of not more than three hundred and sixty are excessive and restrictive to business. Therefore, their reduction will promote businesses particularly for small companies.</p>
706	<p>THAT clause 706 of the Companies Bill, 2015 be amended in sub clause (3) by inserting a new paragraph as follows—</p> <p style="padding-left: 40px;"><i>(c) financial statements or exemption statement, where applicable.</i></p>	<p>The financial statement or exemption statement will add important information to the annual return submitted to the Registrar.</p>
711	<p>THAT clause 711 of the Companies Bill, 2015 be amended in sub clause (2)—</p> <p>(i) in paragraph (b) by deleting the words “<i>seven hundred and twenty million</i>” and substituting therefor the words “<i>fifty million</i>”</p> <p>(ii) in paragraph (c) by deleting the words “<i>three hundred and sixty</i>” and substituting therefor the words “<i>twenty</i>”</p>	<p>The thresholds for qualifications for small companies of a turnover of not more than seven hundred and twenty million shillings and the value of its net assets of not more than three hundred and sixty are excessive and restrictive to business. Therefore, their reduction will promote businesses particularly for small companies.</p>
736	<p>THAT clause 736 be deleted.</p>	<p>The term “senior statutory auditor” does not exist in</p>

		Kenya.
773	<p>THAT clause 773 be deleted and substituted with the following new provision—</p> <p><i>A natural person or firm is eligible for appointment as an auditor only if the person, or each partner of the firm—</i></p> <p><i>(a) is the holder of a practicing certificate issued under section 21 of the Accountants Act;</i></p> <p><i>(b) has a valid annual license issued under section 22 of the Accountants Act.</i></p>	<p>The proposed amendment removes the term “statutory auditor” which is non-existent in Kenya.</p> <p>Further, it adds value and ensures that only qualified and practicing accountants are eligible to be appointed.</p>
330	<p>THAT clause 330 of the Companies Bill, 2015 be amended by inserting the following new paragraphs at the end of the clause—</p> <p><i>“(a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or</i></p> <p><i>(b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.”</i></p>	<p>The proposed insertion cures the incomplete clause after an examination of an equivalent section 552(1) of the Companies Act, 2006 of the United Kingdom from which the Bill is largely borrowed from.</p>
NEW CLAUSE	<p>THAT a new clause be inserted after clause 252 as follows—</p> <p><i>252A. (1) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.</i></p> <p><i>(3) A person who contravenes this section commits an offence and on conviction is liable to a fine not</i></p>	<p>The new clause provides for the offence of giving misleading, false or deceptive information in a statement and provides for stiff penalties for breach so as to protect the interests of companies.</p>

	<i>exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.</i>	
477	<p>THAT clause 477 be amended—</p> <p>(i) in sub clause (2) in paragraph (a) by deleting the words “<i>an appropriate national newspaper</i>” and substituting therefor the words “<i>a daily newspaper of nationwide circulation in Kenya</i>”;</p> <p>(ii) by deleting sub clause (3).</p>	The proposed amendment, apart from providing clarity, is consistent to the language in the existing statutes.
523	<p>THAT clause 523 be amended by inserting a new sub clause immediately after sub clause (2)—</p> <p><i>(2a) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:</i></p> <p><i>Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this</i></p>	<p>The proposed new sub clause is to reinstate what is currently provided for under section 60(4) of the existing Companies Act (Cap 486) on exemption of companies to pay stamp duty on the redemption of shares in exchange for new shares.</p> <p>The provision on exemption from payment of stamp duty on the redemption of shares in exchange for new shares is intended to avoid double taxation of companies.</p>



	<i>subsection unless the old shares are redeemed within one month after the issue of the new shares."</i>	
1010	THAT clause 1010 be amended in sub clause (1) by deleting the words " <i>otherwise than in bound books</i> "	This is in order to provide for precaution to extend to all companies since the words "otherwise than in bound books" may imply that companies that keep their records in bound books are not obligated to take adequate measures to prevent the falsification of their books.
133	THAT clause 133 of the Companies Bill, 2015 be deleted.	The independence of the committee, already provided for under the Capital Markets Act, prompts the need to realign this clause to the Capital Markets Act.

# **APPENDIX 1**

**MINUTES OF THE 50<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 30<sup>TH</sup> JUNE 2015, AT 4:30 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

1. Hon. Samuel Chepkong'a, MP – **Chairperson**
2. Hon. Neto Agostinho, MP
3. Hon. Benson Mutura, MP
4. Hon. David Ouma Ochieng, MP
5. Hon. Fatuma Ibrahim Ali, MP
6. Hon. Florence Kajuju, MP
7. Hon. Johanna Ngeno, MP
8. Hon. Muriithi Waiganjo, MP
9. Hon. John Njoroge Chege, MP
10. Hon. Olago Aluoch, MP
11. Hon. William Mwamkale, M.P
12. Hon. Moses Cheboi, MP
13. Hon. Kaluma Peter, MP
14. Hon. Mutua Mutemi (Bishop), MP
15. Hon. Sammy Koech, MP

**APOLOGIES:-**

16. Hon. Priscilla Nyokabi, MP – **Vice Chairperson**
17. Hon. Boniface Otsiula, MP
18. Hon. Charles Gimose, MP
19. Hon. James Bett, MP
20. Hon. Paul Bii, MP
21. Hon. Dr. Christine Ombaka, MP
22. Hon. Ben Momanyi Orori, MP
23. Hon. Mohamed Abdi Haji, MP
24. Hon. Kang'ata Irungu, MP
25. Hon. T.J. Kajwang', MP
26. Hon. Ndirangu Waihenya, MP
27. Hon. Munuve Mati John, MP
28. Hon. William Cheptumo, MP
29. Hon. Njoroge Baiya, MP

**IN ATTENDANCE:-**

**SECRETARIAT**

- |                          |   |                        |
|--------------------------|---|------------------------|
| 1. Mr. George Gazemba    | - | Senior Clerk Assistant |
| 2. Ms. Mary L. Lemerelle | - | Clerk Assistant III    |
| 3. Mr. Ahmed Salim       | - | Clerk Assistant III    |
| 4. Mr. Salem Lorot       | - | Legal Counsel          |

**MIN NO. JLA/195/2015:-      PRELIMINARIES**

The Chairperson called the meeting to order at 4:37 p.m. with a word of prayer from Hon. (Bishop) Mutua Mutemi.

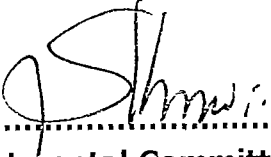
**MIN NO. JLA/196/2015:-      -      ADOPTION OF THE REPORT ON THE COMPANIES BILL, 2015 AND THE INSOLVENCY BILL, 2015**

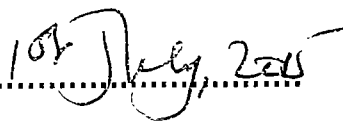
The Committee considered the draft report on proposed amendments to the Companies Bill, 2015 and unanimously adopted it. The amendments had been agreed on during a retreat held on 26<sup>th</sup> and 27<sup>th</sup> June, 2015 at Serena Hotel in Mombasa. The adoption of the report was proposed by Hon. (Bishop) Mutemi and seconded by Hon. Sammy Koech.

Consideration and adoption of the report on the Insolvency Bill, 2015 was deferred.

**MIN NO. JLA/197/2015:-      ADJOURNMENT**

There being no other business, the Chairperson adjourned the meeting at seven minutes past five.

Signed:  .....  
 (Chairperson, Departmental Committee on Justice & Legal Affairs  
 Committee)

Date:  .....

# APPENDIX 2

(1) D/committees

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643

Our Ref: CMA/04/1/31/1

June 15, 2015

Mr. Justin N. Bundi, CBS  
Clerk of the National Assembly  
P.O. Box 41842-00100  
Parliament Buildings  
NAIROBI

Dear Mr. Bundi

**RE: IN THE MATTERS OF CONSIDERATION BY THE NATIONAL ASSEMBLY -  
THE COMPANIES BILL, 2015 AND THE INSOLVENCY BILL, 2015**

We refer to your call for comments and proposals on the Companies Bill, 2015 and the Insolvency Bill, 2015.

The Capital Markets Authority is established under the Capital Markets Act, Cap. 485A with the twin mandate of development and regulation of capital markets in Kenya. The Capital Markets Authority is also mandated to administer the Central Depositories Act, 2000. The Capital Markets Act presumes the existence of a primary companies' legislative framework to govern both players and issuers of securities in the capital markets. This principle is illustrated through the higher standards of compliance prescribed for all listed companies under the Capital Markets Act and the Central Depositories Act whereas unlisted companies are only required to comply with the Companies Act.

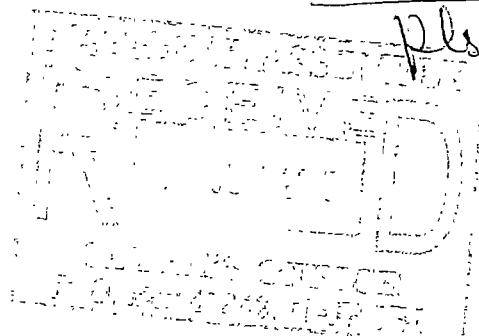
We note that the two Bills are fundamentally critical for the development and growth of Kenya's capital markets. The Capital Markets Master Plan (2014-2023) underpins the need for a sound financial market that is critically dependent on sound corporate governance and reliable and transparent financial reporting.

The Authority has undertaken a review of the two Bills and would like to make the following proposals –

**A. Companies Bill**

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public offers of securities are regulated by the Capital Markets Authority under the Capital Markets Act.

2. **Part XXIV – Company Takeovers;** the Capital Markets Authority has been designated as the responsible institution for administering the provisions of this Part. This mandate is wider than the current responsibilities under the Capital Markets Act which restricts the Authority's scope to listed companies. Additionally, most of the provisions are very prescriptive and would significantly constrain the Authority's rule making powers under this Part. We also note that the role of the Competition Authority of Kenya in takeovers has not been recognized under this Part.
3. **Definitions;** several definitions require to be harmonized with those under the Capital Markets Act including-
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## **B. Insolvency Bill**

The Central Depositories Act requires all listed securities to be held by a central depository for purposes of ensuring efficient execution of transactions at a securities exchange. Therefore, these securities are held by the central depository in trust for the beneficiaries who are the shareholders in the listed companies. It is therefore important to create a "carve-out" or clear exemption provision in this Bill in order to ensure that those securities cannot be available in case such a central depository became insolvent.

The Central Depositories Act requires was amended in 2011 (vide The Central Depositories Act No. 38 of 2011) to incorporate this key principle through introduction of sections 43A as well as sections 5B, 5C and 5D but we believe that such key provisions would require to be stipulated in the primary Insolvency Law i.e. the Insolvency Bill for purposes of clarity and comprehensiveness of this law.

Additionally, a similar "carve-out" or exemption provision is necessary to cater for instances where a trading participant at a securities exchange, for instance a stockbroker, becomes insolvent. It is important that any securities and any other assets held by such a stockbroker in trust for its clients and proprietary assets held by the stockbroker for purposes of settlement of market transactions are ring-fenced from application by the liquidator of the entity. Protection of clients'

assets in the control of a stockbroker or any other market participant is fundamental in capital markets. Furthermore, all securities and funds committed for settlement of market transactions should be ring-fenced as well so as to avoid a series of defaults across the capital market. A provision excluding availability of such assets to a liquidator mitigates liquidation risk and increases investor confidence in the Kenyan securities markets. This is in line with international best standards and ensure progress towards the establishment of the Nairobi International Financial Centre. Such "carve-outs" guarantees that funds allocated for settlement of market transactions will not be subject to claw back for payment of general creditors of the firm.

Similarly, another "carve-out" or exemption should be made to apply to all assets held by entities in a fiduciary capacity on behalf of beneficiaries. This is particularly important with the advent of Special Purpose Vehicles (SPVs) required to hold assets on behalf of many beneficiaries for instance in the case of Collective Investment Schemes (CIS), Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS) provided for under the Capital Markets Act, in order to ensure that those assets are not available in case of insolvency of the SPV, which could be a company or Trust or Trustee.

We believe that these proposals will further strengthen and streamline the two Bills as well as ensure that the two Bills are in harmony with the Capital Markets Act.

We are available for further consultation and clarifications on the proposals and other areas that are connected to our mandate.

Yours sincerely



Paul M. Muthaura  
Ag. CHIEF EXECUTIVE

CC: Dr.Kamau Thugge,EBS  
Principal Secretary  
The National Treasury  
Treasury Building  
NAIROBI





The Institute of  
Certified Public Secretaries  
of Kenya

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June 15, 2015

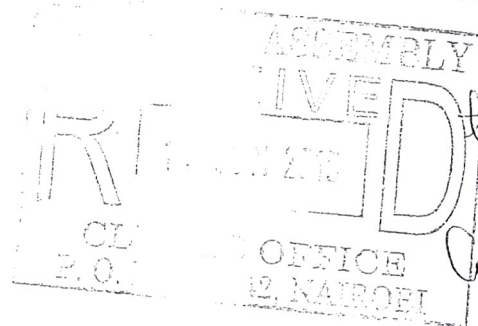
Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

① D/Committees

② CIA ZEMBA

Dear Mr. Bundi,

RE: THE COMPANIES BILL, 2015



Bring to the attention of the Committee

FA 16/6

We refer to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015. We note that the Companies Bill, 2015 was published under Kenya Gazette Supplement No. 54 (National Assembly Bills No. 22) in readiness for enactment into law by Parliament.

The Institute of Certified Public Secretaries of Kenya (ICPSK) was incorporated in 1988 by an Act of Parliament; The Certified Public Secretaries of Kenya Act, Cap. 534 of the Laws of Kenya. In line with its mandate to promote good governance the Institute has been involved in various initiatives including development of the Code of Governance for Government Owned Entities, *Mwongozo* and other Industry Specific Codes of Governance. In addition, the Institute has consistently made proposals in the review of the Companies Act, Chapter 486 of the Laws of Kenya.

The Institute appreciates that some of its proposals have been incorporated into the Companies Bill, 2015. However, it has been noted that some of the key proposals which have an impact on the governance structure of companies have not been factored in. Key among them is *Section 244* which provides that *private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more.*

Noting that the Company Secretary is responsible for ensuring compliance with governance requirements, exempting some companies from having a Secretary would have a significant negative effect especially at a time when our country is faced with governance challenges. This was also observed by the United Kingdom's Company Law Review Group. During the review of the Companies Act of the United Kingdom, there was a proposal that the position of Company Secretary should not be obligatory for all private companies. The Review Group, however, noted that issues of corporate governance and compliance were becoming increasingly complex and important. In the light of historically high levels of failure to comply with rudimentary filing obligations on the part of companies, the group noted that it would be a step backward to remove the officer expected to attend to, or at least to be competent to attend to, such obligations. The Review Group therefore recommended that the office of Company Secretary be retained.

Our recommendation that all companies in Kenya should have a Company Secretary is therefore made on the basis of good corporate governance and in line with current international best practice.



of governance

A member of Corporate Secretaries International Association

We therefore kindly request to meet you and the Departmental Committee on Justice and Legal Affairs at your earliest convenience to discuss this matter. Whereas the Institute proposes a number of amendments in this regard, we wish to however highlight four (4) most critical items that which we request consideration for further amendment prior to enactment of the Bill into law:

	PROVISION IN THE COMPANIES BILL	PROPOSED AMENDMENT	JUSTIFICATION
1.	S.244 - Private Companies - not required to have a Secretary	Propose that the section be worded as " <i>Requirement for a secretary</i> "  Section 244 (1) - " <i>Every Company shall have a secretary.</i> "  Section 244(2)(a)(i), (ii) and (b)(i) and (ii) be deleted.	Data available from the Company's registry shows that very few companies other than those required by Regulators are registered with an authorized share capital above 100,000. The Company Secretary helps the Board monitor the effectiveness of the Company's governance practice, compliance with the law and the articles and Memorandum
2.	S.245 - Public Company requires to have a secretary	Propose that the section is worded " <i>Qualifications of a secretary</i> "  <i>No person shall qualify for appointment as Secretary unless he is registered as such under the Certified Public Secretaries of Kenya Act, Chapter 534 of the Laws of Kenya.</i>	It is important that a person appointed as secretary is a trained person and a member of a professional body which regulates his professional conduct as prescribed by Law.
3.	S. 705 - Duty of company to lodge annual returns with Registrar.	S.705 Insert (3) (c) " <i>Is signed by a director and the company secretary</i> "	
4.	Any reference to "Public" with regard to the company secretary be deleted throughout part XII of the Bill.		

We shall be most grateful if you would kindly consider the above proposals for amendment to the Bill before it is enacted into law.

Please accept our gratitude for the continued support from your office as we look forward to meeting you and the Departmental Committee on Justice and Legal Affairs at their earliest convenience.

Yours sincerely,



CS. DR. NICHOLAS K. LETTING'  
CHAIRMAN

CC: The Cabinet Secretary, Treasury  
The Principal Secretary, Treasury  
The Director General- Accounting Services  
The Attorney General

# APPENDIX 2



U L/committees

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Our Ref: CMA/04/1/31/1

June 15, 2015

Mr. Justin N. Bundi, CBS  
Clerk of the National Assembly  
P.O. Box 41842-00100  
Parliament Buildings  
NAIROBI

Dear Mr. Bundi

**RE: IN THE MATTERS OF CONSIDERATION BY THE NATIONAL ASSEMBLY -  
THE COMPANIES BILL, 2015 AND THE INSOLVENCY BILL, 2015**

We refer to your call for comments and proposals on the Companies Bill, 2015 and the Insolvency Bill, 2015.

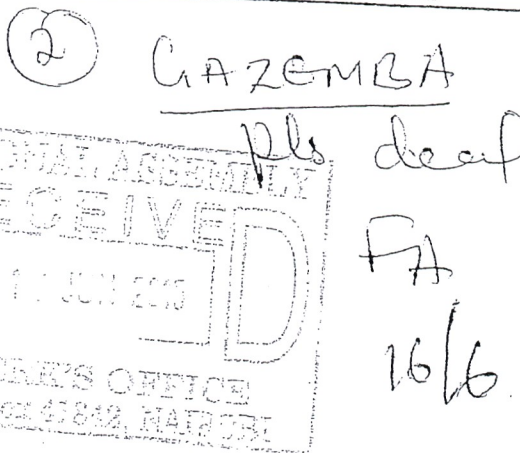
The Capital Markets Authority is established under the Capital Markets Act, Cap. 485A with the twin mandate of development and regulation of capital markets in Kenya. The Capital Markets Authority is also mandated to administer the Central Depositories Act, 2000. The Capital Markets Act presumes the existence of a primary companies' legislative framework to govern both players and issuers of securities in the capital markets. This principle is illustrated through the higher standards of compliance prescribed for all listed companies under the Capital Markets Act and the Central Depositories Act whereas unlisted companies are only required to comply with the Companies Act.

We note that the two Bills are fundamentally critical for the development and growth of Kenya's capital markets. The Capital Markets Master Plan (2014-2023) underpins the need for a sound financial market that is critically dependent on sound corporate governance and reliable and transparent financial reporting.

The Authority has undertaken a review of the two Bills and would like to make the following proposals –

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Ag. CHIEF EXECUTIVE

CC: Dr.Kamau Thugge,EBS  
Principal Secretary  
The National Treasury  
Treasury Building  
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June 15, 2015

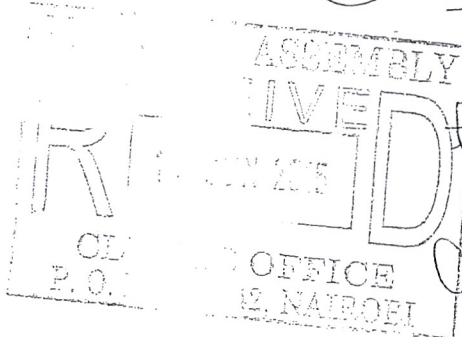
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Yours sincerely,



CS. DR. NICHOLAS K. LETTING'  
CHAIRMAN

CC: The Cabinet Secretary, Treasury  
The Principal Secretary, Treasury  
The Director General- Accounting Services  
The Attorney General



Institute of Certified Public Accountants of Kenya  
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Fax: (020) 8562206  
Drop in box no. 164 Revlon Professional Plaza

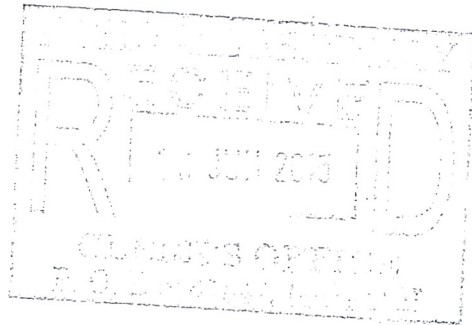


*D/Committee*  
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18/6

Our Ref: ICPAK/CEO/01/36/2015

Monday, 15 June 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P. O Box 41842-00100  
Nairobi,  
KENYA  
Email: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)



Dear *Mr. Bundi,*

RE: ICPAK SUBMISSION ON THE DRAFT COMPANIES ACT (AMMENDMENT) BILL 2015

The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory body of accountants established under by the Accountants' Act of 1978 and mandated to develop and regulate the Accountancy Profession in Kenya.

We refer to the advertisement appearing in the Daily Nation of Tuesday June 9, 2015 inviting members of the public to submit written representations on the Insolvency Bill, 2015 and the Companies Bills, 2015. We have reviewed the Companies' Bill 2015 and attached herein are our submissions for the consideration of the Justice and Legal Affairs Committee of the National Assembly.

We will be glad to be accorded an opportunity to discuss these submissions at the convenience of the Committee.

Yours *Sincerely*

CPA Dr. Patrick Ngumi, PhD  
CHIEF EXECUTIVE

② *GAZEMBA*  
*pls deaf*  
*FA*  
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cc: ~~The Cabinet Secretary, the National Treasury~~  
~~Nairobi~~

For your information

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## ALN

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KENYA | MALAWI | MAURITIUS  
NIGERIA | RWANDA | SUDAN  
TANZANIA | UGANDA | ZAMBIA

AFFILIATE OFFICE IN DUBAI  
ANJARWALLA COLLINS & HAIDERMOTA

Our Ref DNG/AK/Gen  
Your Ref TBA  
Date 19 June, 2015

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

Attn: Justin Bundi, CBS

Dear Sir,

The Companies Bill, 2015

We refer to the above matter and your advertisement on the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015 (the 2015 Bill).

We are grateful for the extension accorded to us to submit our comments by 19 June 2015. We had previously submitted our comments on the Companies Bill 2014 (the 2014 Bill) via a letter dated 31 October 2014 (which we enclose for your ease of reference). We note that some of our recommendations have been incorporated into the 2015 Bill.

The 2015 Bill proposes to repeal and replace the current Companies Act (Cap 486) (the Companies Act). We laud the 2015 Bill's intention to change the company law regime in line with international developments and move away from the current system of company law which is based on the UK Companies Act of 1948.

We note that most of the provisions in the 2015 Bill are principally based on the UK Companies Act of 2006 (the UK Companies Act). We have reviewed the 2015 Bill and case law emanating from the provisions and interpretation of the UK Companies Act and our comments are based on the interpretation of the various cases.

We note that while the 2015 Bill is substantially similar to the UK Companies Act, some provisions and/or sub-sections of the UK Companies Act have been left out of the 2015 Bill. These omissions may lead to misinterpretation, and possibly the ineffectiveness of certain provisions of the 2015 Bill.

The 2015 Bill refers to the provisions of the Insolvency Act, 2015 which statute has not been enacted into law as yet. We would recommend that the Companies Bill and the Insolvency Bill

② CAZEMBA  
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2015 be enacted at the same time. Further, we recommend that references to the Insolvency Act 2015 should instead be to the insolvency laws in force in Kenya from time to time, as the Insolvency Act, 2015 is likely to be amended from time to time.

We set out below a summary of some of the issues that have arisen out of our review below.

## 1 PART III - COMPANY'S CONSTITUTION

1.1 We have noted an error in cross-referencing in section 26 of the 2015 Bill. Section 26 reads as follows:

*"...but are not provisions of the kind referred to in section 7 become provisions of the companies articles on that commencement..."*

This section should cross- refer to section 12 instead of section 7 of the 2015 Bill.

## 2 NAME OF THE COMPANY

2.1 We note that the 2015 Bill does not make it an offence and does not prescribe for a penalty if a company does not comply with the registrar's direction when directed to change the name of a company due to similarity with another company. We note that there is a similar provision on the UK Companies Act and recommend that the following section 58 (5) should be inserted:

*"(5) If a company fails to comply with the direction issued under sub-section (3), an offence is committed by—*

*(a) the company, and*

*(b) every officer of the company who is in default.*

*(6) A person guilty of an offence under this section is liable on conviction to a fine not exceeding [\*] and, for continued contravention, a daily default fine not exceeding [\*]."*

2.2 Section 60 relates to a situation where the registrar may direct a company to change its name if he/she is of the opinion that false information was given for purposes of registration or an undertaking or assurance to that effect has not been fulfilled or where the company name is misleading as to the nature of activities or is likely to cause harm to members of public. The 2014 Bill required that the registrar's directive be in writing. The 2015 Bill has excluded this requirement. We recommend that the requirement be retained in the 2015 Bill.

2.3 In sub-section 60 (5), we recommend the insertion of sub-section "61(1)" for the sub-section to read as follows:

*"Sub-section (4) does not have effect if the outcome of an application made to the Court under sub-section 61 (1) is pending."*

2.4 Sub-section 62 (e) is a repetition of sub-section (d). We suggest that clause (e) should be deleted.

## 3 PART IX - COMPANY DIRECTORS

3.1 There is a cross referencing error in sub-section 173 (3) of the Companies Bill, which states:

*"An approval is not required under section 150 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if—"*

The section should refer to section 168 instead of section 150.

#### 4 PART XI- DERIVATIVE ACTIONS

- 4.1 There is a cross referencing error in sub-section 242 (3) (b), which states;

*"(3) In considering whether to give permission, the Court shall take into account the following considerations:*

*(b) the importance that a person acting in accordance with section 145 would attach to continuing it;"*

The section should refer to section 144 instead of section 145.

#### 5 PART XII -COMPANY SECRETARIES

- 5.1 Sub-section 244 (1) provides:

*"A private company is required to have a secretary only if it has a paid up capital of five million shillings or more."*

This implies that a private company with a paid up share capital of less than KES 5,000,000/= is not (necessarily) required to have a secretary. If it is the intention that a private company with a paid up share capital of KES 5,000,000/= and below should not have a secretary, we propose that it be clearly set out to avoid ambiguity.

- 5.2 Section 248 appears to apply only to public companies. We propose an amendment to sub-section 248(1) so that private companies with the said paid up share capital observe the requirement of appointing a secretary. Section 248 (1) currently reads:

*"If satisfied that a public company is failing to..."*

We propose that it is amended to read:

*"if satisfied that a public company or a private company with a paid up share capital of KES 5,000,000 and above is failing to..."*

- 5.3 Generally, company secretaries are the primary source of advice on the conduct of business. We would recommend that a secretary be required for all companies to promote compliance with company record keeping, administrative and governance matters.

- 5.4 In light of the above, any reference to "Public" with regard to the company secretary be deleted throughout Part XII of the Bill.

#### 6 PART XIV-SHARE CAPITAL OF COMPANY

- 6.1 Section 330 (1) of the Companies Bill is incomplete. The section states:

*"330(1) Except as permitted by section 331, a company shall not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of the person-"*

This provision appears to be incomplete. We suggest that the sub-section should be amended to correspond with sub-section 552 (1) of the UK Companies Act 2015 which states:

*"(1) Except as permitted by section 553 (permitted commission), a company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his—*

*(a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or*



*(b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company."*

- 6.2 The numbering in section 331 is erroneous, there is a repetition of the numbering (a) and (b). Further, the sub-sections have been erroneously arranged. We recommend that correct drafting of the section.
- 6.3 There is a cross-referencing error in sub-section 349 (5). It should refer to section 348 instead of section 350.
- 6.4 We note that the 2015 Bill omits the equivalent section 572 of the UK Companies Act. We recommend that this section be inserted into the 2015 Bill as sub-section 352:

**"Section 352 Liability for false statement in directors' statement**

*(1) This section applies in relation to a director's statement under section 350 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under sub-section (7) of that section.*

*(2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.*

*(3) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding two years or a fine (or both)."*

- 6.5 Section 591 of the UK Companies Act provides that a company is not prevented from enforcing an undertaking to do work in payment for the shares in a Company. This provision has been omitted in the 2015 Bill and we would recommend that it is retained in the 2015 Bill.

**7 PART XV - REORGANISATION OF COMPANY'S SHARE CAPITAL**

- 7.1 The definition of "appropriate national newspaper" under sub-section 477(3) should be amended to refer to "a daily newspaper which has nationwide circulation in Kenya". This would be consistent with other Kenyan statutes such as the Capital Markets Act (Cap 485A) (the Capital Markets Act) and the Transfer of Business Act (Cap 500). The current definition of "a newspaper circulating throughout the part of Kenya in which the company is registered" is more akin to the definition of a local or county newspaper. As companies are not restricted from doing business anywhere in Kenya, our view is that a nationwide newspaper would be more appropriate.

- 7.2 There is a cross-referencing error at section 478(2)(a)(i-ii), which refers to sections 465(1) and 465(2) instead of sections 477 (1) and 477 (2) respectively.

**8 PART XVIII - CERTIFICATION AND TRANSFER OF SECURITIES**

- 8.1 Section 722 of the UK Companies Act does not contain a provision for the payment of damages as is the case in section 499 of the 2015 Bill. It is not clear what the rationale behind this provision in 2015 Bill is. However, if the provision is to be retained, we would recommend that:

8.1.1 the definition of damages should be elaborated;

8.1.2 consideration should be given to whether to specify a limit of the amount of damages payable; and

8.1.3 a requirement that damages must be awarded by the Court.

9 PART XIX - PUBLIC OFFERS OF SECURITIES BY PRIVATE AND PUBLIC COMPANIES

9.1 Section 518 which relates to share capital for a public company, provides that for purposes of sections 516 and 517 the "authorised minimum" is Kenya Shillings six million seven hundred and fifty thousand (KES 6,750,000/=). It is not clear whether "authorized minimum" refers to share capital which is simply authorised or requires this amount to be paid up. We would recommend that this is clarified.

9.2 We would propose that in section 518, the words "*in relation to the nominal value of a public company's allotted share capital*" are added immediately after the words "*authorised minimum*" to clarify this issue so that the amended section would read:

*"For the purposes of sections 516 and 517, the authorised minimum in relation to the nominal value of a public company's allotted share capital is six million seven hundred and fifty thousand"*

9.3 Further, we note that the amount of KES 6,750,000/= is based on the amount set out in section 763 of the UK Companies Act of £50,000 converted at the exchange rate of KES 147=£1. We would propose that a lower amount is considered in view of the economic disparity between Kenya and the United Kingdom.

9.4 Under section 518 of the 2015 Bill, there is no provision for alteration of the "*minimum share capital requirement*" by the relevant authority as in the section 764 of the UK Companies Act. We are of the view that this would be helpful to include in the 2015 Bill because any amendment to the prescribed amount under the 2015 Bill would require parliamentary action to amend the legislation which would take significant time and is administratively challenging.

10 PART XX - REDEEMABLE SHARES

10.1 Sub-section 520(4) appears to be erroneous as it suggests that a company can issue redeemable shares only if the already issued shares are all redeemable. The section should be reworded as follows:

*"No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable."*

10.2 There is a typographical error in sub-section 520(1) in word "share" which should be "shares" The sub-section should read:

*"A limited company having a share capital may issue redeemable shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder"*

10.3 In order to avoid the company having to pay stamp duty on the redemption of its shares in exchange for new shares, a new sub-section 523(2) should be added to section 523. This provision exists under section 60(4) of the current Kenyan Companies Act (Cap 486). The new sub-section 523(2) should read:

*"523(2) "Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:"*

*Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares."*

## 11 PART XXII - INFORMATION ABOUT INTERESTS IN COMPANY'S SHARES

- 11.1 There is an error in sub-section 536(5)(b)(i) which refers to section 568 instead of section 566. This sub-section should be amended to read:

*"an agreement to which section 566 (certain share acquisition agreements); or"*

- 11.2 There is an error in sub-section 547(1) which cross-refers to section 780 instead of section 536. Sub-section 547(1) should be amended to read:

*"A company that is required under section 546 to exercise its powers under section 536 (notice requiring information about interest in company's shares) shall exercise those powers in the manner specified in the requests."*

- 11.3 Sub-section 549(2) creates an offence for noncompliance with sub-sections 548(7) and 548(8). Sub-section 548(8) does not exist and sub-section 548(7) does not include any obligations which a company needs to comply with. Therefore, we recommend that sub-section 549(2) is deleted and sub-section 549(3) is renumbered to become the new sub-section 549(2).

- 11.4 We note that the numbering of the sub-sections in section 550 is incorrect as sub-section 550(8) is missing. Sub-section 550(9) should be renumbered as sub-section 550(8), while sub-section 550(10) be renumbered as sub-section 550(9) and sub-section 550(11) be renumbered as sub-section 550(10).

## 12 PART XXIV-COMPANY TAKEOVERS

- 12.1 The provisions of Part XXVIII of the 2015 Bill gave force of law to the takeover panel and the rules that the City of London had been following and therefore several of these provision are not applicable in the Kenyan context. The provisions of Part XVIII should therefore be carefully considered as some of the provisions in Part XVIII contradict The Takeovers Regulations and will be likely to cause a lot of confusion and inconsistency in the law. For example, the definition of a "takeover", an "associate" and an "offeror" in the 2015 Bill are quite differed to the corresponding definitions under the Takeover Regulations and the Capital Markets Act. In addition, several sections overlap with the Capital Markets Act, such as the power of the Authority to make regulations which is similar to section 12 of the Capital Markets Act which gives the Minister power to make regulations pursuant to the Capital Markets Act.

- 12.2 The 2015 Bill does not provide for the definition of the term "takeover" or term "merger." The Competition Act (No. 12 of 2010) uses the terms interchangeably. The Capital Markets (Takeover and Merger) Regulations 2002 defines a merger as *means an arrangement whereby the assets of two or more companies become vested in or under the control of one company*. Consequently, reference to other legislation or guidelines specifically touching on mergers will be necessary if the 2015 Bill is not amended. We propose that the 2015 Bill defines both these terms in a manner consistent with existing legislation.

- 12.3 In Section 598, there is a wrong short title. The correct short title should be:

*"Offence to disclose information in contravention of section 597"*

- 12.4 There is a cross reference error in sub-section 607 (4). There should be a reference to section 606 rather than 618.
- 12.5 Section 618(3) erroneously cross-references to 611(6) rather than 613(6).
- 12.6 There are no provisions on the application of The Capital Markets (Take-overs and Mergers) Regulations, 2002 (the Takeovers Regulations) that are currently in use. Further, it is important to note that the Capital Markets Authority has also proposed to introduce the Securities Industry (Takeovers) Regulations 2011 (Draft) which shall apply to the conduct of all takeover offers, whether voluntary or mandatory, made in respect of listed companies. In addition, the provision for the "Takeover Rules" under the 2015 Bill will cause confusion because Kenya already has the Takeovers Regulations, which have statutory force of law, unlike the position in the UK before the provisions of Part 28 of the UK Companies Act became law.
- 12.7 In section 599, there is no definition of the term "sanctions". We recommend that this definition is included in the 2015 Bill.
- 12.8 We note that the 2015 Bill does not make any transitional provisions in respect of takeovers made pursuant to the Takeovers Regulations. We recommend that some transitional provisions are included as the changes are fairly significant and companies will need enough time to comply once the 2015 Bill is enacted.
- 13 PART XXV- COMPANY ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**
- 13.1 Section 629 does not include the defence (showing that the person acted honestly and that in the circumstances in which the company's business was carried on the default was excusable) available on failure to comply with section 628 as is the case with its corresponding section 387 in the UK Companies Act. We recommend that the 2015 Bill include this defence.
- 13.2 Section 631 does not provide for the defence provided under the corresponding section 389(2) of the UK Companies Act. We recommend that the 2015 Bill include this defence.
- 13.3 There is an error in numbering in Section 655 as the sub sections are numbered as subsections 6,8,7,9. We recommend that the section be numbered correctly.
- 13.4 There is a cross-referencing error in section 678. It should refer to section 676 instead of section 686.
- 13.5 Under section 705, we recommend an additional sub-section 705(3)(e) requiring that annual returns to be signed by the director and the company secretary before filings are made with the Registrar of Companies.
- 14 PART XXVII AUDITING OF COMPANY FINANCIAL STATEMENTS**
- 14.1 There is an error in numbering in Section 711. Sub-section 711 (4) appears twice. We recommend that the second 711(4) be renumbered as 711(5).
- 14.2 Section 715 does not define "e-money issuer" as has been defined in the Section 539 of the UK Companies Act. We recommend that this term be defined in the 2015 Bill.
- 14.3 There is a cross referencing error in Section 715 .It should refer to section 714 rather than 551.
- 14.4 There is a cross referencing error in Section 739 (3). It should refer to sub-section 730(2)(b) instead of sub-section 730 (4).



- 14.5 There is a cross referencing error in Section 744(6) . It refer to sub-section 267(4) instead of sub-section 269(4).
- 14.6 There is a cross referencing error in Section 763. It should refer to section 762 instead of section 764. We recommend that addition of sub-section 764 (b) as follows:
- “ in connection with an application under section 764 in which relief is granted to him by the court.”*
- 15 PART XXX- COMPANY INVESTIGATIONS**
- 15.1 There is a cross-referencing error in sub-section 829(4). It should refer to sub-section 828(6) or (8) instead of sub-section 841(6) or (8).
- 16 PART XXXIII - DISSOLUTION AND RESTORATION TO THE REGISTER**
- 16.1 There is a cross referencing error in sub-section 903(1) and (3). It should refer to sections 901 and 902 instead of 904 and 905.
- 16.2 Section 913 of the 2015 Bill makes reference to the Insolvency Act 2013 which statute has not been enacted yet. We recommend that the 2015 Bill refer to *“laws relating to insolvency as may be amended from time to time”*.
- 17 PART XXXIV - COMPROMISES, ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS**
- 17.1 There is a cross referencing error in sub-section 926(1). It should refer to section 925 instead of section 923.
- 18 PART XXXV - MERGERS AND DIVISIONS OF PUBLIC COMPANIES**
- 18.1 There is a cross referencing error in sub-section 940(4). It should refer to section 652 instead of section 642.
- 18.2 There is a cross referencing error in sub-section 953(2)(a). It should refer to – section 925 instead of section 923.
- 18.3 There is a cross referencing error in sub-section 955(4). It should refer to section 652 instead of section 665.
- 19 PART XXXVII - FOREIGN COMPANIES**
- 19.1 Section 983 of the Companies Bill provides that foreign registered companies are prohibited from carrying on business in any place in Kenya unless they have notified the Registrar of their place of business. Failure to issue the relevant notification amounts to an offence. However, there may be a situation in which companies which may operate have operations in Kenya through the internet without having a physical presence in Kenya. The 2015 Bill states that following technological advances, a company may operate in Kenya through the internet. Consequently, it is not clear whether the companies which operate in Kenya through the internet currently will be exempt from the ambit of the 2015 Bill. We recommend that the 2015 Bill caters for such instances.
- 19.2 In section 1002 the word court should be capitalised so that it is consistent with the definitions at the start of the 2015 Bill and its use in other sections.
- 19.3 Section 1004 of the 2015 Bill provides that a Court may make orders but subject to the Insolvency Act, 2015 which statute has not yet been enacted.

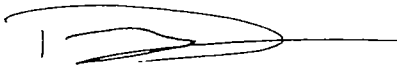
19.4 Section 1010 states that a company that keeps its records otherwise than in bound books must take adequate protection against falsification which implies that companies that keep their records in bound books are not obligated to take adequate measures to prevent the falsification of their books. We recommend that this precaution should extend to all companies. In addition, there is a typographical error in sub- section 1010(1) due to an additional word "be" which should be deleted. Sub-section 1010 (1) should be amended to read as follows:

*"A company that keeps its records shall ensure that adequate precautions are taken-"*

19.5 Paragraphs 2 and 7 of schedule 5 have been repeated. One paragraph should be deleted and the other paragraphs should be renumbered accordingly.

We trust that you will consider the issues raised. We will revert to you in the event that we have further comments on the 2015 Bill.

Yours faithfully,



**Dominic Rebelo for and on behalf of Anjarwalla  
&Khanna**

June 11, 2015

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644  
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SARE-AWENDO

(1) D/Committees

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

(2) GAZEMBA  
pls deaf  
FA 12/6

Dear Mr. Bundi,

**RE: IN THE METTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY - THE COMPANIES BILL, 2015**

I refer to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015.

I am a female Kenyan citizen who has had a lot of interest in the area of Corporate Governance and its overall impact in the management of affairs of companies. I have conducted research and case studies around this subject matter. Key amongst my findings has been the fact that the office of a Company Secretary is fundamental for ensuring compliance with governance requirements.

It is for this reason that I applaud the Government and His Excellency the President for coming up with Code of Governance for State Corporations (*Mwongozo*). As you are aware, this guide which was launched by his Excellency the President early this year, has also acknowledged the role of the Company Secretary in management affairs of State owned companies, the impact of such a move will have significant impact of how state resources in state owned companies are utilised.

I have perused the Companies Bill, 2015 and noted a loophole that can be negatively exploited, i.e Section **244 which provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more.**

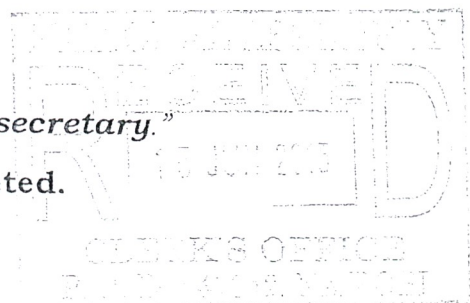
Sir, it is my very humble view that exempting some companies from having a Secretary would have a significant negative effect especially at a time when our country is faced with governance challenges and when issues of corporate governance and compliance are becoming increasingly complex and important.

I therefore humbly recommend that you reconsider and make it mandatory for all companies in Kenya to have a Company Secretary by amending section 244. The section should thus be worded as follows:-

**"Requirement for a secretary"**

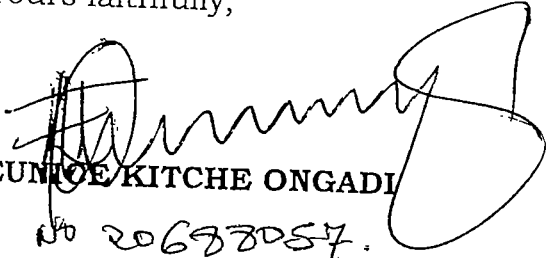
Section 244 (1) - **"Every Company shall have a secretary."**

Section 244(2)(a)(i), (ii) and (b)(i) and (ii) be deleted.



It is also my view that the Bill should specify the qualifications of a Secretary and any reference to "Public" with regard to the company secretary be deleted.

Yours faithfully,



**EUNICE KITCHE ONGADI**  
P No 20688057.



PRESENTATION ON COMPANIES BILL 2015

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645

To

The National Assembly  
Thro' Clerk to the National Assembly  
Main Parliament buildings  
P. O Box 41842-00100  
Nairobi, Kenya.  
Email: clerk@parliament.go.ke

① D/Committee



From

CS. Stella Nyamu  
CS. Paul Makokha  
P. O Box 105923-00101  
Nairobi  
0721579388/0727-919897

② GAZEMBA  
pls deaf  
FA  
16/6

Dear Sirs & Honourable Members,

REF: COMPANIES BILL 2015

We refer to the above matter and your invitation for public representations though Daily Nation of 9<sup>th</sup> June 2015.

Your honour and honorable members, the undersigned are certified public secretaries registered in Kenya under Certified Public Secretaries of Kenya Act, Cap. 534 Laws of Kenya. Some of our duties entail inter alia the following;

- i. advising business persons on forming companies under Kenyan Laws.
- ii. offering advisory to clients on management of companies in Kenya
- iii. acting as advisor to various boards of companies
- iv. drafting of various companies documents for filing
- v. Guiding companies on matters of good corporate governance and regulation

In addition a company secretary authenticates company's resolutions and transactions and remains a point of reference alongside keeping records of the company. As an impartial officer as he/she ensures corporate actions are above board hence contributing to stability and success of the company.

Without going into specifics, we wish to draw your attention to the following observation.

- a. Almost all the company work company secretaries handle are for companies with nominal capital of not more than Ksh. 100,000/=

- b. Most of the companies doing well engage professional company secretaries while those that ignore engaging such experts experience mismanagement and risk to collapse.
- c. The companies with nominal capital of more than Ksh.100,000/, leave alone 1 million or 5 million are very few in number.

In the circumstances sir and the honourable members, failing to provide for every company whether private or public to have a company secretary is detrimental to good corporate governance and this threatens growth of companies.

Just as it is necessary to have a company auditor, lawyer or other experts to ensure success of the company and business, the qualified company secretary is key in providing leadership, advisory and guidance to the companies' boards, management and shareholders.

Remember, conflicts in a company may jeopardize the interests of shareholders and other stakeholders; a company secretary is only the voice of reason who is required to provide guidance to ensure good corporate guidance and governance.

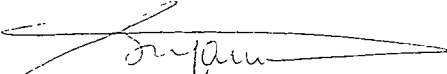
Cases have been reported at the companies registry where a director(s) have been removed from the company directorship without their consent or knowledge. Company secretary ensures that any outgoing director or shareholder or incoming director or shareholder is present in any meeting where such changes are intended by a company. In view of the above, absence of a company secretary in any meeting where directors or shareholders are transacting business pertaining removal of a shareholder or director may lead to loss of ownership of business by a person who otherwise is a legitimate owner to fraudster or disgruntled directors/shareholders.

It is our humble prayer that you do reconsider section 244 of the Companies Bill 2015 to provide for mandatory trained, qualified company secretary to provide for corporate guidance and regulation in companies.

**NB:** In this article qualified company secretary should be given the meaning provided for by the Certified Public Secretaries of Kenya Act, Cap. 534 of the Laws of Kenya.

Thank you sir and honourable members for listening to us.

Yours truly,

  
CS. Stella Nyamu

  
CS. Paul Makokha

① D/Committees

802  
641

Cs Caroline W Macharia  
ICPSK Reg. No 2469  
Practising No. 1180  
P.O. Box 13748-00800, Westlands  
Nairobi, Kenya

15<sup>th</sup> June, 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

② CIAZEMBA

pls deaf

FA 16/6

Dear Sir,

RE: THE COMPANIES BILL, 2015

I refer to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015. I note that the Companies Bill, 2015 was published under Kenya Gazette Supplement No. 54 (National Assembly Bills No. 22) in readiness for enactment into law by Parliament.

As a practising member of the Institute of Certified Public Secretaries of Kenya (ICPSK), I wish to point out that *Section 244 which provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more* should be reviewed.

This is in view of the fact that the Company Secretary plays a pivotal role in ensuring compliance with the Companies' Act as well as promoting sound corporate governance requirements; hence negating the need for some companies from having a Secretary would have a significant negative effect especially at a time when our country is faced with governance challenges. I therefore recommended that the office of Company Secretary be retained for all companies.

I shall be most grateful if you would kindly consider the above proposal for review to the Bill before it is enacted into law.

Yours faithfully,



CS. CAROLINE W. MACHARIA

# Livingstone Associates

Certified Public Secretaries (Kenya)  
Deloitte Place  
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15<sup>th</sup> June 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O. Box 41842-00100  
NAIROBI

Dear Sir,

**RE: THE COMPANIES BILL, 2015**

We refer to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015. We note that the Companies Bill, 2015 was published under Kenya Gazette Supplement No. 54 (National Assembly Bills No. 22) in readiness for enactment into law by Parliament

As a firm offering Company Secretarial services with at least 8 practising members of the Institute of Certified Public Secretaries of Kenya (ICPSK), we wish to point out that **Section 244 which provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more** should be amended.

This is in view of the fact that Company Secretaries play a key role in ensuring compliance with the Companies' Act as well as promoting sound corporate governance guidelines. Therefore, the exemption for some companies from having a Secretary is most likely to have a significant negative effect especially at a time when our country is faced with governance challenges. In addition, this requirement will also have negative far reaching impact on the Companies' Registry which has had challenges by companies not complying with the basic statutory requirements.

We therefore recommended that the office of Company Secretary be retained for all companies.

We shall be most grateful if you would kindly consider the above proposal for review to the Bill before it is enacted into law.

Yours faithfully,



For LIVINGSTONE ASSOCIATES  
CS WINNIE JUMBA

GAZEMBA

plb decap

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16/6



Cs Enid K Muriuki  
P.O. Box 49382, 00100 GPO  
Nairobi

15<sup>th</sup> June, 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

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FA 16/6

Dear Sir,

THE COMPANIES BILL 2015

I refer to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and other local dailies inviting members of the public to submit their representations on the Companies Bill, 2015 which was published under Kenya Gazette Supplement No. 54 (National Assembly Bills No. 22) in readiness for enactment into law by Parliament.

As a practising member of the Institute of Certified Public Secretaries of Kenya (ICPSK), I wish to point out that **Section 244 which provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more** should be reviewed.

This is in view of the fact that the Company Secretary plays a pivotal role in ensuring compliance with the provisions of the Companies Act as well as promoting sound corporate governance practices. Removing this provision is therefore likely to results in a negative impact on compliance in terms of Companies not filing statutory returns as required under the Companies Act and in implementation of good governance practices especially at a time when our country is faced with significant governance challenges.

I therefore recommended that the office of Company Secretary be retained for all companies incorporated and registered under the Companies Act.

I shall be most grateful if you would kindly consider the above concern as you review the Bill before it is enacted into law.

Yours faithfully,



CS. ENID MURIUKI (Registration No. 1807)

RECEIVED  
16/6/2015  
SECRETARY GENERAL  
NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

CS KATHRYNE MAUNDU  
ICPSK Reg. No 2159  
Practising Certificate No. 1081

P O BOX 47085, 00100  
NAIROBI

15<sup>th</sup> June, 2015

Mr Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

Dear Sir,

RE: THE COMPANIES BILL, 2015

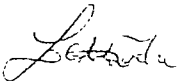
Reference is made to your advertisement on page 44 of the Daily Nation News Paper of Tuesday June 9, 2015 and to other local dailies inviting members of the public to submit their representations on the Insolvency Bill, 2015 and the Companies Bills, 2015. I note that the Companies Bill, 2015 was published under Kenya Gazette Supplement No. 54 (National Assembly Bills No. 22) in readiness for enactment into law by Parliament.

As a practising member of the Institute of Certified Public Secretaries of Kenya (ICPSK), I wish to point out that the proposed *Section 244 which provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more* should be reviewed

This is in view of the fact that the Company Secretary plays a pivotal role in ensuring compliance with the Companies' Act as well as promoting sound corporate governance requirements, hence negating the need for some companies from having a Secretary would have a significant negative effect especially at a time when our country is faced with governance challenges. I therefore recommend that the office of Company Secretary be retained for all companies that are registered in Kenya

I shall be most grateful if you would kindly consider the above proposal for review to the Bill before it is enacted into law.

Yours faithfully,



CS. KATHRYNE MAUNDU

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pls deaf  
PA  
16/6

① D/Commls

Cs Winniefred Jumba  
ICPSK Reg. No 1468  
P.O. Box 4138, 00506  
Nairobi, Kenya

15<sup>th</sup> June, 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.

② CAZEMBA

pls deaf

FA

16/6

Dear Sir,

RE: THE COMPANIES BILL, 2015

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This is in view of the fact that the Company Secretary plays a pivotal role in ensuring compliance with the Companies' Act as well as promoting sound corporate governance requirements; hence negating the need for some companies from having a Secretary would have a significant negative effect especially at a time when our country is faced with governance challenges. I therefore recommended that the office of Company Secretary be retained for all companies.

I shall be most grateful if you would kindly consider the above proposal for review to the Bill before it is enacted into law.

Yours faithfully,

*W Jumba*

CS. WINNIEFRED JUMBA



① D/Wonder

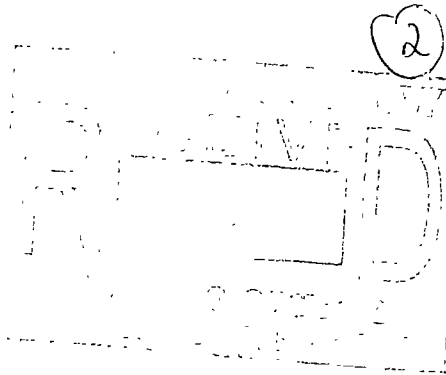
50  
years of  
excellence

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Our Ref: PKF/2609/2015

15 June 2015

Mr. Justin Bundi, CBS  
The Clerk of the National Assembly  
Main Parliament Buildings  
P O Box 41842 - 00100  
NAIROBI



② GARZEMBA

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Dear Mr Bundi

### Companies Bill 2015 – representations and submissions

We refer to the invitation for representations and submissions on the Companies Bill 2015 as set out in your advertisement which appeared in the Daily Nation of Tuesday 9 June 2015 and provide herewith our feedback.

Overall, we are highly supportive of the need for updated legislation covering the regulation of Companies given the fact that the existing Act is aged and has not kept up with global developments and progress in this area. We therefore applaud your offices in coming up with proposals to achieve this objective.


We have also read the detailed submissions made by the Institute of Certified Public Accountants of Kenya (ICPAK) as the overall governing body for professional accountants in Kenya and are supportive of the same. For this reason, we have sought not to repeat each of the submissions made by ICPAK, and have instead highlighted below the main areas of concern from our review of the Bill:

- We note that the Bill seeks to provide small companies with a number of exemptions including the requirement for annual statutory audits. The bill defines a small company broadly as one that meets two of the three criteria being total annual turnover of less than Shs. 720 million, assets of less than Shs. 360 million and employees numbering less than 50. Whilst we acknowledge the need to allow small companies exemptions that make it easier and less costly to do business, we are of the strong opinion that the monetary thresholds set out above are too high and will end up capturing much more than 'Small' companies in Kenya. Indeed from our experience in the Kenyan market, there are only very few companies that have a turnover in excess of Shs. 720 million and assets in excess of Shs. 360 million with more than 50 employees, and such companies represent the largest of commercial enterprise in our economy. In our opinion, these thresholds should be set at not more than 10% of the current proposals in the Bill.
- We also note that the bill exempts the requirement for a company with share capital of less than Shs. 5 million to have a Company Secretary. We are of the opinion that this exemption will have significant negative effects on the implementation of good corporate governance, accountability and compliance with the requirements of a more detailed and sophisticated new Act (once enacted) and therefore this proposal should be reconsidered. In our view, all companies must have a qualified and registered Company Secretary.

- Having perused through the Bill, we note that the Bill is drawn substantially from the UK Companies Act 2006. While we support the approach of referring to best practice from other countries, we are concerned that the Bill, if enacted, will prove to be a highly complex piece of legislation and despite the significant penalties it proposes for non-compliance, take-up and ability to understand the new legislation will be very slow. We therefore are of the opinion that the Bill as whole be reconsidered in this light to make it simpler and easier to apply in the Kenyan context.

We thank you for the opportunity to provide feedback on the Companies Bill 2015 and look forward to our suggestions being considered. We would be pleased to meet with you and your team to discuss the above in more detail.

Yours faithfully



**Alpesh Vadher**  
Managing Partner  
PKF Kenya

BELLMOUNT REGISTRARS  
P.O. BOX 1891- 00200,  
NAIROBI

12<sup>TH</sup> JUNE, 2015

THE CLERK, NATIONAL ASSEMBLY,  
MAIN PARLIAMENT BUILDING,  
P.O. BOX 41842 - 00100,  
NAIROBI

(ATT. JUSTIN BUNDI CBS)

Dear Sir,

AMENDMENT OF S.244 OF THE COMPANIES ACT

I hereby wish to submit my personal appeal so that the proposed amendment of s. 244 of the Companies Act can be waived/ and or reconsidered, which reads viz,

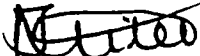
*Section 244 of the Bill still provides that private Companies are not required to have a Secretary unless they have a paid up capital of five million shillings or more.*

The quoted section will affect income generated by the businesses hence will deny the Government a lot of revenue as most of the business entities operate Companies with minimum share Capital of Kshs. 100,000/- whereby Certified Secretaries play a crucial role in ensuring that companies do comply with Government laid down procedures. It will also render most of the Medium and Small entities with company secretarial Companies to be declared redundant.

I kindly thereof request that Parliament do consider revising the requirements that Private Company having a paid up Capital commencing with Kshs. 100,000/- should have a Secretary.

Your consideration in this matter will be highly appreciated.

Yours sincerely,

  
JANE MWANGANGI  
CS NO. 1038

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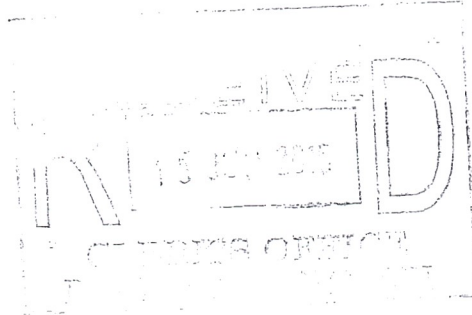


DD/Committee

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June 15, 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
P.O Box 41842-00100  
Nairobi, Kenya.



Dear Mr. Bundi,

**RE: THE COMPANIES BILL, 2015**

Refer to your advertisement of Tuesday June 9, 2015 on the above subject matter.

I am requesting for the following amendments in the Companies Bill, 2015.

CURRENT PROVISIONS	AMENDMENTS REQUESTED	JUSTIFICATION
1. 244 -- Private Companies not required to have a Secretary	Propose that the section be worded as "Requirement for a secretary"  Section 244 (1) -- "Every Company shall have a secretary."  Section 244(2)(a)(i), (ii) and (b)(i) and (ii) be deleted.	<ul style="list-style-type: none"> <li>A company can hire a full time or a part-time Secretary depending with its financial ability.</li> <li>The Certified Secretary will improve corporate governance and compliance.</li> </ul>
2. S.245 -- Public Company requires to have a secretary	Propose that the section is worded "Qualifications of a secretary"  The section should read: "No person shall qualify for appointment as Secretary unless he is qualified under the Certified Public Secretaries of Kenya Act, Chapter 534 of the Laws of Kenya".	It is important that a person appointed as secretary is a trained person and a member of a professional body which regulates his professional conduct as prescribed by Law.
3. part XII	Reference to "Public" with regard to the company secretary be deleted throughout part XII of the Bill.	This will remove the connotation that only public companies should have a Secretary

Yours sincerely,

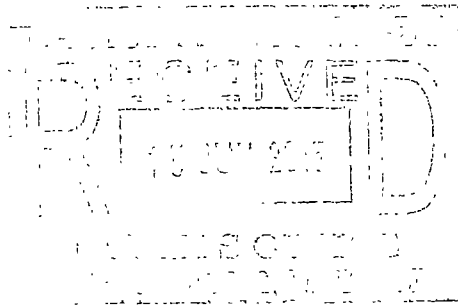
~~Bundi~~  
Emily Muganyi  
@selebiwa@gmail.com  
-725394880

(2) GAZEMBA  
pls deaf  
FA  
16/6

648

June 15, 2015

Mr. Justin Bundi, CBS  
The Clerk, National Assembly  
Main Parliament buildings  
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Yours sincerely,

Ms. M. Roman  
www.pineapple.com  
724 811109.

GAZEMBA

pls deaf

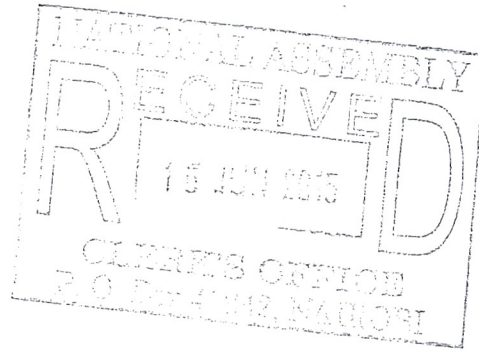
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Yours sincerely,

Ms. Felicitas M. Mnyaka

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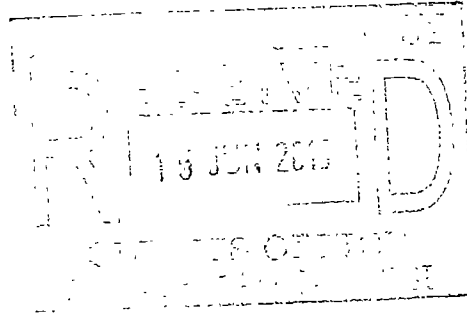
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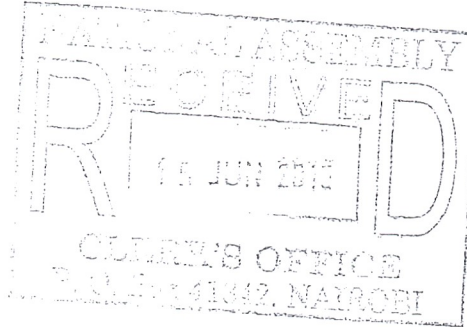
~~Justin Bundi~~  
Douglas Kilumbi  
dkilumbi@yahoo.com

GAZEMBA  
pls deaf  
FA  
16/6

Jeremiah Ndung'u Karanja  
 Email: [karajen2005@yahoo.com](mailto:karajen2005@yahoo.com)  
 Phone: 0723-369521

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Sincerely,

N. Karanja

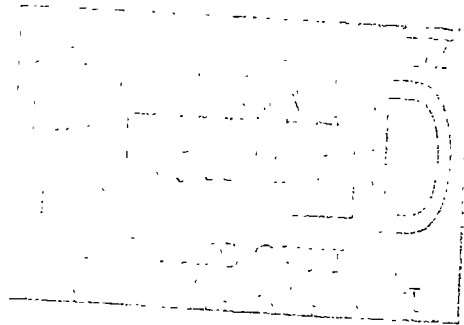
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pls deep  
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Yours sincerely,

Julius Nalio Kyalo

21400737

ju@yuhia.com

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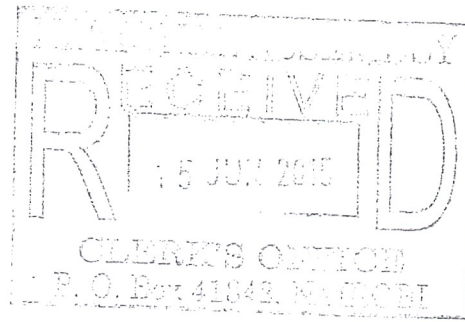
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John K. Mbungu.

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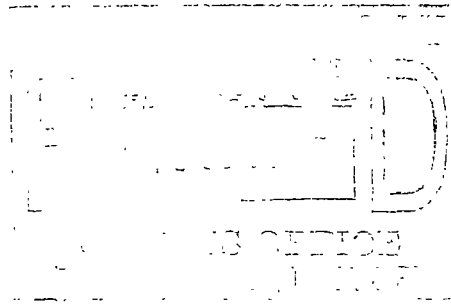
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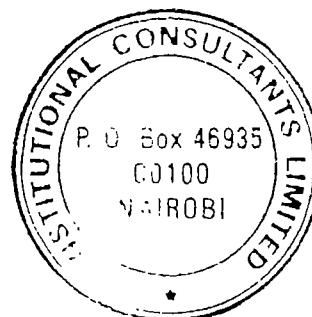
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HEBETT KOSKE (GENERAL MANAGER)

INSTITUTIONAL CONSULTANTS LTD

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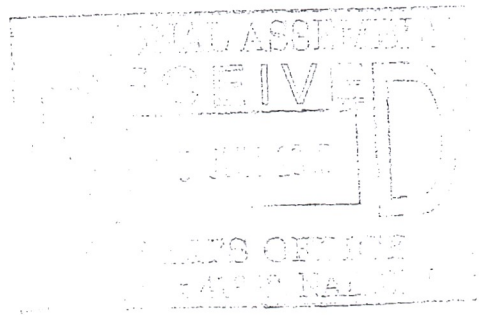
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Name: John Omandi Ywada  
Mobile No: 0722485343  
Email: ondorogwada@gmail.com  
Sign: Jwada

June 15, 2015

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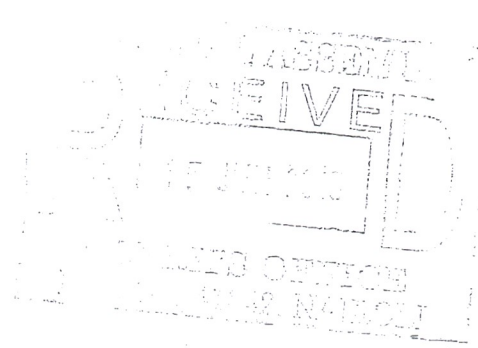
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CAZEMBIA  
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Emily Wanjau  
Secretary

0720950571

CIAZEMBA  
pls deaf  
RA  
16/6

