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**THE BUSINESS LAWS (AMENDMENT) (NO. 2)
ACT, 2021
No. 1 of 2021**

Date of Assent: 30th March, 2021

Date of Commencement: 30th March, 2021

**AN ACT of Parliament to make amendments to various
statutes to facilitate the ease of doing business in
Kenya; and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Business Laws (Amendment) (No. 2) Act, 2021 and shall come into force upon assent.

Short title and commencement.

2. Section 3 of the Law of Contract Act is amended in subsection (6), in the definition of the term “sign”, by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 3 of Cap 23.

(c) execution of the document in accordance with section 37 of the Companies Act, 2015, for body corporates incorporated under the Companies Act, 2015.

3. Section 5B of the Industrial Training Act is amended by inserting the following proviso at the end of subsection (2)—

Amendment of section 5B of Cap. 237.

Provided that the amount payable under the levy shall be remitted at the end of the financial year of the business but not later than the ninth day of the month following end of the financial year.”

4. Section 117 of the Stamp Duty Act is amended by inserting the following new paragraph immediately after paragraph (o)—

Amendment of section 117 of Cap 480.

(p) fixed duty of one hundred shillings charged on contracts to be chargeable as conveyances on sale under section 49.

5. Section 15 of the National Hospital Insurance Fund is amended in subsection (4) by deleting the word ‘first’ and substituting therefor the word “ninth”.

Amendment of section 15 of 9 of 1998.

6. The National Social Security Fund Act is amended—

Amendment of section 20 of No. 45 of 2013.

- (a) in section 20 by inserting the following new subsection immediately after subsection (1)—

(1A) An employer shall pay the contribution under subsection (1) on the ninth day of each month or on such later date as the Board may, in consultation with the Cabinet Secretary, prescribe.

- (b) in section 27 by deleting the words “within one month after the end of the month in which the last day of the contribution period to which it falls” appearing in subsection (1) and substituting therefor the following “on or before the prescribed day on which the payment in respect of any month is due.”

7. Section 3 of the Companies Act is amended—

Amendment of section 2 of No. 17 of 2015.

- (a) in the definition of the term “general meeting” by inserting the words “which may be a physical, virtual or hybrid meeting” immediately after the words “general meeting”;

- (b) by inserting the following new definitions in proper alphabetic sequence—

“hybrid meeting” in relation to a company general meeting, means a meeting where some participants are in the same physical location while other participants join the meeting through electronic means including video conference, audio conference, web conference or such other electronic means;

“virtual meeting” in relation to a company general meeting, means a meeting where all members join and participate in the meeting through electronic means including video conference, audio conference, web conference or such other electronic means;

8. Section 283 of the Companies Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 283 of No. 17 of 2015.

- (ba) in the case of a hybrid or virtual meeting, specify the means of joining and participating in the meeting; and.

9. Section 285 of the Companies Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 285 of No. 17 of 2015.

- (ba) in the case of a hybrid or virtual meeting, specify the means of joining and participating in the meeting; and.

10. The Sixth Schedule to the Companies Act is amended by deleting paragraph 11.

Amendment of the Sixth Schedule to No. 17 of 2015.

11. Section 474 of the Insolvency Act is amended by deleting subsection (5) and substituting therefor the following new subsection—

Amendment of section 474 of No. 18 of 2015.

(5) Subsection (2) does not apply to a company if—

- (a) the liquidator, administrator or provisional liquidator applies to the Court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits;
- (b) a holder of a floating charge applies to the Court on the grounds that the effect of subsection (2) unfairly harms its interests; and
- (c) as a result of such an application, the Court orders that subsection (2) is not to apply or is to apply subject to the conditions the Court considers just.

12. The Insolvency Act is amended—

Amendment of the subheading of Part IXA of No. 18 of 2015.

- (a) by deleting the subheading “Division 2 – Moratoria on debt payments when company’s director propose voluntary arrangement” appearing immediately after section 635 and substituting therefore the following new subheading—

“PART IXA – PRE-INSOLVENCY MORATORIUM”; and

- (b) by deleting the subheading “Subdivision 1” appearing immediately before section 636 and substituting therefor the subheading “Division 1”.

13. Section 636 of the Insolvency Act is amended—

Amendment of section 636 of No. 18 of 2015.

- (a) in subsection (1) —

- (i) by deleting the subheading “Division” and substituting therefor the subheading “Part”;

- (ii) by deleting the definition of the term “proposal”;
- (iii) by inserting the following new definition in proper alphabetical sequence—
“monitor” means the person designated as such under section 643(2)(b);
- (iv) by deleting the definition of the term “moratorium committee”; and
- (b) by deleting subsection (2).
- 14.** Section 637 of the Insolvency Act is amended — Amendment of section 637 of No. 18 of 2015.
- (a) in the marginal note, by deleting the word “Division” and substituting therefor the word “Part”; and
- (b) by deleting paragraph (d).
- 15.** Section 638 of the Insolvency Act is amended — Amendment of section 638 of No. 18 of 2015.
- (a) in paragraph (b), by deleting the word ‘Subdivision’ and substituting therefor the word ‘Part’; and
- (b) by inserting the following new paragraph immediately after paragraph (b)—
- (c) is financially distressed’
- 16.** Section 640 of the Insolvency Act is amended — Amendment of section 640 of No. 18 of 2015.
- (a) in paragraph (e), by deleting subparagraphs (i) and (ii);
- (b) in paragraph (g), by deleting the expression “section 630(7)(a)” and substituting therefor the expression “section 630(5)(a)”; and
- (c) in paragraph (h), by deleting the words “under the repealed Companies Act”.
- 17.** The Insolvency Act is amended by repealing section 642. Repeal of section 642 of No. 18 of 2015.
- 18.** The Insolvency Act is amended by deleting the subheading “Subdivision 2” appearing immediately after section 642 and substituting therefor the subheading “Division 2.” Amendment of the subheading in No. 18 of 2015.
- 19.** Section 643 of the Insolvency Act is amended — Amendment of section 643 of No. 18 of 2015.
- (a) by deleting subsection (1);

- (b) in subsection (2)—
- (i) by deleting paragraph (a)(i) and substituting therefor the following new paragraph—
 - (a) a document setting out why a moratorium is desirable, which may include evidence that it will assist in agreeing an informal restructuring or other agreement with creditors or entering a formal insolvency procedure which could lead to the rescue or efficient liquidation of the company;
 - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) appoint as its monitor an authorised insolvency practitioner who has consented to supervise it;
- (c) by deleting subsection (3) and substituting therefor the following new paragraph—
- (3) The directors shall submit the documents required under subsection (2) to the monitor for consideration and comment.
- (d) in subsection (4)—
- (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor” wherever it appears in the subsection;
 - (ii) by deleting the words “that supervisor” and substituting therefor the words “the monitor”;
- (e) in subsection (5)—
- (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
 - (ii) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) the proposed moratorium has a reasonable prospect of achieving its aim;
 - (iii) by deleting paragraph (c);
- (f) in subsection (6)—
- (i) by deleting the words “provisional supervisor” appearing immediately after the words “in

subsection (5)” and substituting therefore the word “monitor”;

(ii) by deleting the word “supervisor” appearing immediately after the words “unless that” and substituting therefore the word “monitor”; and

(g) in subsection (7) by deleting the word “it” appearing immediately after the word “carry”.

20. Section 644 of the Insolvency Act is amended in subsection (1) —

Amendment of section 644 of No. 18 of 2015.

(a) in paragraph (a), by deleting the words “proposal and statement” and substituting therefor the word “documents”;

(b) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) a statement from the monitor that the monitor has consented to act as monitor of the moratorium’;

(c) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) a statement from the monitor that, in the monitor’s opinion—

(i) the proposed moratorium has a reasonable prospect of achieving its aims; and

(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business.

21. Section 645 of the Insolvency Act is amended—

Amendment of section 645 of No. 18 of 2015.

(a) by deleting subsection (2) and substituting therefor the following new subsection (2)—

(2) A moratorium ends after thirty days from and including the day on which the moratorium takes effect, unless the moratorium period is extended under section 669.

(b) by deleting subsection (3);

(c) by deleting subsection (6);

(d) by deleting subsection (7); and

(e) in subsection (8), by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (2)”.

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*Business Laws (Amendment) (No. 2)***No. 1****22.** Section 646 of the Insolvency Act is amended—Amendment of
section 646 of No.
18 of 2015.

- (a) in subsection (1), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”; and
- (b) in subsection (3), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”.

23. Section 647 of the Insolvency Act is amended—Amendment of
section 647 of No.
18 of 2015.

- (a) in the marginal note, by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1)—
 - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
 - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) give a notice to the effect that the moratorium has taken effect to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium; and
- (c) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (d) in subsection (3)—
 - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
 - (ii) by deleting the words “that supervisor” and substituting therefor the words “the monitor”.

24. Section 648 of the Insolvency Act is amended—Amendment of
section 648 of No.
18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1), —
 - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph —

(b) give to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium a notice to the effect that the moratorium has ended; and

(c) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(d) in subsection (3) —

(iii) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(iv) by deleting the words “that supervisor” and substituting therefor the words “the monitor”.

25. The Insolvency Act is amended by deleting the subheading “Subdivision 3” appearing immediately after section 648 and substituting therefor the subheading “Division 3”.

Amendment of the subheading in No. 18 of 2015.

26. Section 649 of the Insolvency Act is amended—

Amendment of section 649 of No. 18 of 2015.

(a) in subsection (1)—

(i) in paragraph (a) by inserting the word “of” immediately after the word “liquidation”;

(ii) in paragraph (b), by deleting the words “provisional supervisor” appearing in subparagraph (i) and substituting therefor the word “monitor”;

(iii) by inserting the following new paragraph immediately after paragraph (f)—

(fa) an administrative receiver of the company may not be appointed”;

(b) in subsection (2), by deleting the words “or at a time referred to in section 666(5)(a)”;

(c) in subsection (4), by deleting the expression “section 424” and substituting therefor the expression “section 426”;

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- 27.** Section 651 of the Insolvency Act is amended by deleting the words “enforcement of”.
- 28.** Section 653 of the Insolvency Act is amended—
- (a) in the marginal note by deleting the words “provisional supervisor’s” and substituting therefor the word “monitor’s”; and
 - (b) in subsection (1), by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”.
- 29.** Section 655 of the Insolvency Act is amended—
- (a) in subsection (1), by deleting the words “provisional supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”; and
 - (b) by deleting paragraph (1)(b) and substituting therefor the following new paragraph—
 - (b) the disposal is approved by the monitor.
- 30.** Section 656 of the Insolvency Act is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—
- (b) the payment is approved by the monitor’
- 31.** Section 657 of the Insolvency Act is amended—
- (a) in subsection (2), by deleting the words “to which this section applies” and substituting therefor the words “that is subject to a security”;
 - (b) in subsection (3), by deleting the words “to which this section applies” and substituting therefor the words “in the possession of the company under a credit purchase transaction”
- 32.** The Insolvency Act is amended by deleting the subheading “Subdivision 4 – Provisional supervisors” appearing immediately after section 657 and substituting therefor the subheading “Division 4 – Monitors”.
- 33.** Section 658 of the Insolvency Act is amended—
- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor’s”;

Amendment of section 651 of No. 18 of 2015.

Amendment of section 653 of No. 18 of 2015.

Amendment of section 655 of No. 18 of 2015.

Amendment of section 656 of No. 18 of 2015.

Amendment of section 657 of No. 18 of 2015.

Amendment of the subheading of No. 18 of 2015.

Amendment of section 658 of No. 18 of 2015.

- (b) by deleting subsection (1) and substituting therefor the following new subsection—

(1) During the moratorium, the monitor is responsible for monitoring the company's activities in order to ascertain whether the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

- (c) in subsection (2) —

- (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (ii) by deleting the word “supervisor” and substituting therefor the word “monitor”;

- (d) in subsection (3) —

- (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”; and
- (ii) by deleting the words “supervisor” and substituting therefor the word “monitor”;

- (e) in subsection (4), by deleting the expression “subsection (1)(b)” and substituting therefor the expression “subsection (1)”; and

- (f) in subsection (5) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”.

34. Section 659 of the Insolvency Act is amended—

Amendment of section 659 of No. 18 of 2015.

- (a) in the marginal note, by deleting the words “provisional supervisor’s” and substituting therefor the word “monitor’s”;

- (b) in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) the monitor concludes that the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business;

- (c) in subsection (2), by deleting the expression “subsection (1)(a)(ii)” and substituting therefor the expression “subsection (1)(a)”;
- (d) in subsection (3) by deleting the word “provisional supervisor’s” and substituting therefor the word “monitor”;
- (e) in subsection (4) —
 - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
 - (ii) by deleting the word “supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”;
- (f) by deleting subsection (5);
- (g) in subsection (6), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (h) in subsection (7) —
 - (i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
 - (ii) by deleting the words “supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”.

35. Section 660 of the Insolvency Act is amended—

Amendment of section 660 of No. 18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor’s” and substituting therefor the word “monitor’s”;
- (b) in subsection (1), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (c) in subsection (3), by deleting the words “provisional supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”.

36. Section 661 of the Insolvency Act is amended—

Amendment to section 661 of No. 18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

- (b) in subsection (1) —
 - (i) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefore the word “monitor”;
 - (ii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”;
- (c) in subsection (3) —
 - (i) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”; and
 - (ii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”.

37. Section 662 of the Insolvency Act is amended —

Amendment to
section 662 of No.
18 of 2015.

- (a) in the marginal note by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;
- (b) in subsection (1) —
 - (i) by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (2)”;
 - (iii) by deleting the word “Division” appearing in paragraph (a) and substituting therefor the following new word “Part”;
 - (iv) by deleting the words “provisional supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”;
 - (ii) by deleting the word “supervisor” appearing in paragraph (a) and substituting therefor the word “monitor”; and
 - (iii) by deleting the word “supervisor” appearing in paragraph (b) and substituting therefor the word “monitor”;
- (c) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”; and

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(d) in subsection (3), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”.

38. The Insolvency Act is amended by deleting the subheading “Subdivision 5 – Consideration of proposal for and implementation of voluntary arrangement” appearing immediately after section 662.

Amendment of the subheading in No. 18 of 2015.

39. The Insolvency Act is amended by repealing section 663.

Repeal of section 663 of No. 18 of 2015.

40. The Insolvency Act is amended by repealing section 664.

Repeal of section 664 of No. 18 of 2015.

41. The Insolvency Act is amended by repealing section 665.

Repeal of section 665 of No. 18 of 2015.

42. The Insolvency Act is amended by repealing section 666.

Repeal of section 666 of No. 18 of 2015.

43. The Insolvency Act is amended by repealing section 667.

Repeal of section 667 of No. 18 of 2015.

44. The Insolvency Act is amended by repealing section 668.

Repeal of section 668 of No. 18 of 2015.

45. The Insolvency Act is amended by deleting the subheading “Subdivision 6” appearing immediately after section 668 and substituting therefore the sub heading “Division 5”.

Amendment of 668 in No. 18 of 2015.

46. The Insolvency Act is amended by repealing section 669 and replacing it with the following new section—

Repeal and replacement of section 669 of No. 18 of 2015.

Extension of moratorium

669. On the application of the directors, the Court may extend a moratorium for a period of at least thirty days if the Court believes that the extension is desirable in order to achieve the aims for which the moratorium was initially obtained under section 643.

47. Section 670 of the Insolvency Act is amended—

Amendment of section 670 of No. 18 of 2015.

(a) in subsection (1), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(b) in subsection (2), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”

(c) by deleting subsection (3).

48. Section 671 of the Insolvency Act is amended—

Amendment of section 671 of No. 18 of 2015.

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

(1) If the Court extends, or further extends, the moratorium, the monitor shall within seven days of the order, lodge a copy of the order with the Registrar for registration.;

(b) by deleting subsection (2);

(d) in subsection (3), by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(e) in subsection (4) —

(i) by deleting the words “provisional supervisor” and substituting therefor the word “monitor”;

(ii) by deleting the word “supervisor” and substituting therefor the word “monitor”.

49. The Insolvency Act is amended by repealing section 672.

Repeal of section 672 in No. 18 of 2015.

50. The Insolvency Act is amended by deleting the subheading “Subdivision 7” appearing immediately after section 672 and substituting therefor the subheading “Division 6”.

Amendment of subheading in No. 18 of 2015.

51. The Insolvency Act is amended by repealing section 673.

Repeal of section 673 of No. 18 of 2015.

52. Section 674 of the Insolvency Act is amended in subsection (2)—

Amendment of section 674 of No. 18 of 2015.

(a) in paragraph (a), by inserting the word “unfairly” immediately before the word “detrimental”; and

(b) in paragraph (b), by inserting the word “unfairly” immediately before the word “detrimental”.

53. Section 34 of the Small Claims Court Act is amended in sub-section (1) by inserting the words ‘of the matter which shall be within sixty days from the date of filing the claim’ immediately after the word ‘determination’ appearing at the end of the sub-section.

Amendment of section 34 of No. 2 of 2016.