

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 76 (National Assembly Bills No. 20)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2018**

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**NAIROBI, 19th June, 2018**

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**THE FINANCE BILL, 2018**

**A Bill for**

**AN ACT of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I – PRELIMINARY**

**1.** This Act may be cited as the Finance Act, 2018, and shall come into operation, or be deemed to have come into operation, as follows -

Short title and commencement.

- (a) sections 49, 50, 51, 52, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, and 71, on the 1st October, 2018;
- (b) sections 4, 6, 7, 11(a), 11(c), and 68, on the 1st January 2019;
- (c) all other sections on, the 1st July, 2018.

**PART II – INCOME TAX**

**2.** Section 2 of the Income Tax Act is amended by inserting the following new definition in proper alphabetical sequence -

Amendment of section 2 of Cap. 470.

“demurrage charges” means the penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods”.

**3.** Section 7 of the Income Tax Act is amended by deleting subsection (1) and substituting therefor the following new subsection -

Amendment of section 7 of Cap. 470.

- (1) For the purpose of section 3(2)(b)-
  - (a) a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable;
  - (b) an amount shall be deemed to be a dividend distributed by a company to a shareholder where –
    - (i) any cash or asset is distributed or transferred by that company to or for the benefit of that

shareholder or any person related to that shareholder;

- (ii) the shareholder or any person related to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person;
- (iii) the amount is used by that company in any other manner for the benefit of the shareholder or any person related to that shareholder;
- (iv) any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company;
- (v) the amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment.

**4.** The Income Tax Act is amended by repealing section 7A and replacing it with the following new section -

Amendment of section 7A of Cap. 470.

Dividend distributed out of untaxed gains or profits.

**7A.** Where a dividend is distributed out of gains or profits on which no tax is paid, the company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed:

Provided that this section shall not apply to registered collective investment schemes.

**5.** Section 10 of the Income Tax Act is amended in subsection (1) by adding the following new paragraphs immediately after paragraph (h)-

Amendment of section 10 of Cap. 470.

- (i) demurrage charges; and
- (j) an insurance premium.

**6.** The Income Tax Act is amended by repealing section 12C and replacing it with following new section -

Amendment of section 12C of Cap. 470.

Presumptive tax.

**12C.** (1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.

(2) The presumptive tax shall apply to all persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.

(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.

(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from—

- (a) management and professional services; or
- (b) rental business; or
- (c) incorporated companies.

**7.** Section 15 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (aa) —

- (ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.

**8.** Section 19 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (6A)—

- (6B) For the avoidance of doubt, the gains arising from the transfer of property by an insurance company other than property connected to life insurance business shall be taxed in accordance with

Amendment of  
Section 15 of  
Cap 470

the provisions of the Eighth Schedule.”

9. Section 34 of the Income Tax Act is amended in subsection (2) by inserting the following paragraphs immediately after paragraph (m)-

Amendment of section 34 of Cap. 470.

- (n) demurrage charges; or.
- (o) an insurance premium except insurance premium paid for insurance of aircraft.

10. Section 35 of the Income Tax Act is amended by –

Amendment of section 35 of Cap. 470.

- (a) In subsection (1), by inserting the following paragraph immediately after paragraph (l) –
  - (m) demurrage charges;
  - (n) an insurance premium except insurance premium paid for insurance of aircraft;
- (b) inserting the following new subsection immediately after subsection (5)–
  - (5A) The Commissioner shall pay the tax deducted from winnings under subsection (1) (i) and (3) (h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

11. The Third Schedule to the Income Tax Act is amended-

Amendment of the Third Schedule to Cap. 470.

- (a) in paragraph (2), by adding the following new subparagraph immediately after subparagraph (j)-
  - (k) in the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement.
- (b) in paragraph 3, by inserting the following new subparagraphs immediately after subparagraph (n)-
  - (o) demurrage charges, paid to ship operators, twenty per cent of the gross amount payable;
  - (p) an insurance premium, five per cent of the gross amount payable; and
- (c) by deleting paragraph 9 and substituting therefor the following new paragraph—
  - 9. The rate of presumptive tax shall be an

amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government:

Provided that the tax charged shall be final.”

### **PART III – VALUE ADDED TAX**

**12.** Section 2 of the Value Added Tax Act, 2013 is amended by deleting the definition of the expression “electronic notice system”.

Amendment of section 2 of No. 35 of 2013.

**13.** Section 13 of the Value Added Tax Act, 2013 is amended by deleting subsection (2).

Amendment of section 13 of No. 35 of 2013.

**14.** Section 16 of the Value Added Tax Act, 2013 is amended by deleting subsection (6) and substituting therefor the following new subsection—

Amendment of section 16 of No. 35 of 2013.

(6) A credit or debit note issued under this section shall be in the prescribed form.

**15.** The Value Added Tax Act, 2013 is amended by repealing section 40.

Repeal of section 40 of No. 35 of 2013.

**16.** The Value Added Tax Act, 2013 is amended by repealing section 41.

Repeal of section 41 of No. 35 of 2013.

**17.** Section 44 of the Value Added Tax Act, 2013 is amended by deleting subsections (2), (3), (4) and (5).

Amendment of section 44 of No. 35 of 2013.

**18.** The First Schedule to the Value Added Tax Act, 2013 is amended—

Amendment of First Schedule to No. 35 of 2013.

(a) in section A of Part I—

- (i) by deleting the expressions “1001,” and “and 1003” appearing in paragraph 25;
- (ii) by inserting the words “used for the manufacture of goods” at the end of paragraph 27;
- (iii) by deleting paragraph 28;
- (iv) by inserting the tariff Nos. “1213.00.00, 1214.10.00 and 2303.20.00” in paragraph 43 in proper sequence;
- (v) by deleting paragraph 45 and substituting therefor the following new paragraph—

45. Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power.

- (vi) by deleting the words “primary school laptop tablets” appearing in paragraph 53 and substituting therefor the word “computer”;
  - (vii) by deleting paragraph 63 and substituting therefor the following new paragraph—

63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.
  - (viii) by deleting paragraph 64;
  - (ix) by deleting paragraph 92;
  - (x) in paragraph 93, by inserting the words “and equipment” immediately after the word “materials”;
  - (xi) by adding the following new paragraphs—

94. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

95. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.
- (b) in Part II—
- (i) by deleting item (n) of paragraph 1; and
  - (ii) by adding the following new paragraphs—

29. Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto.

30. Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities.

31. Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

19. The Second Schedule to the Value Added Tax Act, 2013 is amended by deleting tariff No. 3004.40.00 and the corresponding description and inserting the following—

Amendment of  
Second Schedule to  
No. 35 of 2013.

| <i>Tariff No.</i> | <i>Description</i>                            |
|-------------------|---|
| 3004.41.00        | Containing ephedrine or its salts             |
| 3004.42.00        | Containing pseudoephedrine (INN) or its salts |
| 3004.43.00        | Containing norephedrine or its salts          |
| 3004.49.00        | Other   |

#### **PART IV—TAX APPEALS TRIBUNAL**

20. Section 10 of the Tax Appeals Tribunal Act, 2013, is amended in subsection (3) by deleting the words “the proceedings shall be adjourned, and”.

Amendment of  
section 10 of No.  
40 of 2013.

21. Section 13 of the Tax Appeals Tribunal Act, 2013, is amended by inserting a new subsection as follows—

Amendment of  
section 13 No. 40  
of 2013.

(8) The parties to an appeal may apply, in writing, to the Tribunal to settle the dispute out of the Tribunal and in such a case, the time taken to resolve or conclude the settlement out of the Tribunal shall be excluded when calculating the period contemplated in subsection (7).

#### **PART V—EXCISE DUTY**

22. Section 6 of the Excise Duty Act, 2015 is amended in subsection (5) by deleting the expression “section 34” and substituting therefor the expression “section 36”.

Amendment of  
section 6 of No. 23  
of 2015.

23. Section 7 of the Excise Duty Act, 2015 is amended by deleting subsection (5) and substituting therefor the following new subsection —

Amendment of  
Section 7 of Act  
No. 23 of 2015.

(5) An exemption granted under this section shall apply if the Commissioner is satisfied that -

- (a) the goods referred to in subsection (1)(a) have been received and consumed by the exempt person; and
- (b) excisable goods or services for export under subsections (1)(b) and (c) have not been, and shall not be consumed in Kenya.

24. Section 10 of the Excise Duty Act, 2015 is amended by deleting the expression “every two years” and substituting therefor the word “once every year”.

Amendment of  
section 10 of No.  
23 of 2015.

25. Section 20 of the Excise Duty Act, 2015 is amended by in subsection (1) by inserting the words

Amendment of  
section 20 of No.  
23 of 2015.

“Subject to section 23” immediately before the words “The Commissioner”.

**26.** Section 21 of the Excise Duty Act, 2015 is amended in subsection (1) by deleting paragraph (d).

Amendment of section 21 of No. 23 of 2015.

**27.** The Excise Duty Act, 2015 is amended by repealing section 23 and replacing it with the following new section—

Repeal and replacement of section 23 of No. 23 of 2015.

Commissioner to notify licensee prior to suspension of license.

**23.** (1) Where the Commissioner seeks to suspend a licence under this Act, the Commissioner shall give the licensee twenty-one days' notice prior to the suspension, giving grounds on which the suspension shall be done.

(2) A notice issued under this section may require the licensee to remedy any circumstances which may be required to be remedied.

(3) Where a licensee fails to comply with the requirements indicated in the notice issued under this section, the Commissioner may proceed to suspend the licence under section 20.

(4) Despite any other provision of this Act, the Commissioner may suspend a licence without notice, where the licensee—

- (a) has engaged in tax fraud;
- (b) has been found in possession of, or using, counterfeit stamps on excisable goods;
- (c) has been found in possession of goods bearing counterfeit stamps; or
- (d) has violated any regulations relating to health and safety, standards or packaging of goods.

**28.** Section 36 of the Excise Duty Act, 2015 is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of Section 36 of No. 23 of 2015

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under

the Public Finance Management Act, 2012 to support social development including universal health care –

- (a) sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers;
- (b) all the excise duty payable in respect of paragraph 6 of Part II of the First Schedule

**29.** Section 38 of the Excise Duty Act, 2015 is amended in subsection (1) –

Amendment of Section 38 of Act No. 23 of 2015.

- (a) by inserting the words “or five million shillings, whichever is higher” immediately after the word “licensed” appearing in paragraph (a).
- (b) by inserting the words “or five million shillings, whichever is higher” immediately after the word “payable” appearing in paragraph (b).

**30.** Section 39 of the Excise Duty Act, 2015 is amended –

Amendment of section 39 of No. 23 of 2015.

- (a) in subsection (1) by deleting the expression “26(1) or (28(4))” and substituting therefor the expression “or 26(1)”.
- (b) by inserting the following new subsection immediately after subsection (5) –

(6) Any plant or excisable goods or any materials, in respect of which an offence has been established in relation to sections 15,18,19, or 28 shall, in addition to any other penalty imposed under this Act, be forfeited to the Commissioner.”

**31.** The First Schedule to the Excise Duty Act, 2015 is amended –

Amendment of First Schedule to No. 23 of 2015.

- (a) in Part I—
  - (i) by deleting tariff No. 2710.19.22 and the corresponding tariff description and rate of duty in paragraph 1 and substituting therefor the following—

| <i>Tariff No.</i> | <i>Tariff Description</i>                | <i>Rate</i>   |
|-------------------|--|---------------|
| 2710.19.22        | Illuminating Kerosene per 1000l @ 20degC | Ksh 10,305.00 |

- (ii) by deleting the expression “Waters (excluding water of tariff No. 2201.90.00) and other non-alcoholic beverages not including fruit or vegetable juices” appearing in paragraph 1 and substituting therefor the following—

“Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices”.

- (iii) by deleting the description “Motor vehicles excluding locally assembled motor vehicles and school buses for use by public schools of tariff heading 87.02, 87.03 and 87.04” and rate of excise duty thereof and substituting therefor the following new items—

| <i>Description</i>   | <i>Rate of Excise Duty</i> |
|--|----------------------------|
| Motor vehicles (excluding locally assembled motor vehicles, school buses for use by public schools, and motor vehicles of tariff no. 8703.24.90 and 8703.33.90) of tariff heading 87.02, 87.03 and 87.04 | 20%                        |
| Motor vehicles of tariff no. 8703.24.90 and 8703.33.90   | 30%                        |
| Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00  | Shs. 20 per kg             |

- (iv) by deleting the expression “every two years” in paragraph 2 (1) and substituting therefor the words “at the beginning of every financial year”; and
- (v) by deleting the expression “column 2 of” in paragraph 2 (2).
- (b) in Part II—
- (i) by deleting paragraph 3 and substituting therefor the following new paragraph—
3. Excise duty on fees charged for money transfer services by cellular phone service

providers, shall be twelve percent of the excisable value.

(ii) by inserting the following new paragraphs immediately after paragraph 4 -

5. Excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers, shall be ten percent of the excisable value.

6. Excise duty on money transferred by banks, money transfer agencies and other financial service providers shall be 0.05 per cent of the amount transferred in case of money transfer of five hundred thousand shillings or more.

**32.** The Second Schedule to the Excise Duty Act, 2015, is amended in Part A by adding the following new paragraphs—

Amendment of  
Second Schedule  
to No. 23 of 2015.

12. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

13. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

#### **PART V—TAX PROCEDURES**

**33.** Section 3 of the Tax Procedures Act, 2015 is amended in the definition of the words “prescribed form” by deleting the expression “section 70” and substituting therefor the expression “section 71”.

Amendment of  
section 3 of No. 29  
of 2015.

**34.** Section 12 of the Tax Procedures Act, 2015 is amended in subsection (4) by deleting the words “the application” appearing immediately after the expression “subsection (3)”.

Amendment of  
section 12 of No.  
29 of 2015.

**35.** Section 16 of the Tax Procedures Act, 2015 is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of  
section 16 of Act  
No. 29 of 2015.

(3) Where a taxpayer has more than one tax representative, each tax representative shall be responsible for the tax obligation for which the tax representative has been appointed.

**36.** The Tax Procedures Act, 2015 is amended by repealing section 25 and replacing it with the following

Repeal and  
replacement of  
section 25 of No.

new section—

29 of 2015.

Extension of time to  
submit tax return

**25.** (1) A person required to submit a tax return under a tax law may apply in writing to the Commissioner for an extension of time to submit the return.

(2) An application under subsection (1) shall be made at least-

(a) fifteen days before the due date in the case of a monthly return; or

(b) thirty days before the due date in the case of an annual return.

(3) The Commissioner may grant an application under this section if satisfied that there is reasonable cause and shall notify the applicant accordingly at least five days before the due date:

Provided that-

(a) where no notification is received under this subsection, the application shall be deemed to have been granted;

(b) only one extension may be granted to an applicant in respect of a tax period.

(4) The grant of an extension under this section shall not alter the date for payment of any tax due (referred to as the "original due date") under the return as specified in the tax law under which the return has been made.

(5) The provision of section 83 relating to penalties for late submission of returns shall not apply where an extension to submit a return has been granted under this section.

**37.** Section 31 of the Tax Procedures Act, 2015 is amended by deleting subsection (3) and substituting therefor the following new subsection -

(3) Where an amended self-assessment return has been submitted under subsection (2), the Commissioner may accept or reject the

Amendment of  
section 31 of No.  
29 of 2015.

amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection,

**38.** The Tax Procedures Act, 2015 is amended by repealing section 37B and substituting therefor the following new section-

Repeal and replacement of section 37B of Act No. 29 of 2015

Commissioner to refrain from assessing tax for income earned outside Kenya

**37B.** (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31<sup>st</sup> December, 2017, and from following up on the sources of income under the amnesty where -

- (a) that income has been declared for the year 2017 by a person earning taxable income outside Kenya;
- (b) the returns and accounts for the year 2017 are submitted on or before the 30<sup>th</sup> June, 2019; and
- (c) the funds declared voluntarily have been transferred back to Kenya.

(2) This section shall not apply in respect of any tax where the person who should have paid the tax —

- (a) has been assessed in respect of the tax or any matter relating to the tax; or
- (b) is under audit, investigation or is a party to ongoing litigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Where no funds have been transferred within the period of the amnesty, there shall be a five year period for remittance but a penalty of ten percent shall be levied on the remittance.

(4) The funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act

relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from proceeds of terrorism, poaching and drug trafficking.

**39.** Section 38 of the Tax Procedures Act, 2015 is amended in subsection (1) by deleting the word "one" and substituting therefor the word "two".

Amendment of section 38 of No. 29 of 2015.

**40.** Section 42 of the Tax Procedures Act, 2015 is amended -

Amendment of section 42 of No. 29 of 2015.

- (a) in subsection (2), by deleting the word "payer" and substituting therefor the words "an agent";
- (b) in subsection (3), by deleting the word "payer" wherever it occurs and substituting therefor the words "an agent";
- (c) in subsection (5), by deleting the word "payer" and substituting therefor the words "an agent";
- (d) in subsection (6) -
  - (i) by deleting the word "taxpayer" and substituting therefor the words "an agent"; and
  - (ii) by deleting the word "payer" wherever it occurs and substituting therefor the words "an agent";
- (e) in subsection (7), by deleting the word "payer" and wherever it occurs and substituting therefor the words "an agent";
- (f) in subsection (8), by deleting the word "payer" and substituting therefor the words "an agent";
- (g) in subsection (9), by deleting the word "payer" and substituting therefor the words "an agent";
- (h) in subsection (10), by deleting the word "payer" wherever it occurs and substituting therefor the words "an agent"; and
- (i) in subsection (11), by deleting the word "payer" and substituting therefor the words "an agent".

**41.** Section 51 of the Tax Procedures Act, 2015 is amended in subsection (3) -

Amendment of section 51 of No. 29 of 2015.

- (a) by inserting the words "or has applied for an extension of time to pay the tax not in dispute under section 33(1)" at the end of paragraph (b); and

(b) by adding the following new paragraph immediately after paragraph (b) -

(c) all the relevant documents relating to the objection have been submitted.

**42.** Section 62 of the Tax Procedures Act, 2015 is amended by deleting the expression "section 62" appearing in subsection (1) and substituting therefor the expression "section 63".

Amendment of section 62 of No. 29 of 2015.

**43.** Section 80 of the Tax Procedures Act, 2015 is amended by deleting the expression "section 48" appearing in subsection (3) and substituting therefor the expression "section 47".

Amendment of section 80 of No. 29 of 2015.

**44.** Section 83 of the Tax Procedures Act, 2015 is amended in subsection (1)—

Amendment of section 83 of No. 29 of 2015.

(a) by deleting paragraph (c);

(b) by adding the following new paragraphs immediately after paragraph (b) -

(c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;

(d) in any other case -

(i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or

(ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual.

**45.** The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 83—

Insertion of section 83A into No. 29 of 2015.

Late payment penalty.

**83A.** A person who fails to pay tax on the due date shall be liable to pay a late payment penalty of twenty percent of the tax due and payable.

**46.** Section 89 of the Tax Procedures Act, 2015 is

Amendment of section 89 of No.

amended—

29 of 2015.

- (a) in subsection (2), by deleting the word “may” appearing immediately after the word “Commissioner” and substituting therefor the word “shall”;
- (b) by deleting subsection (7) and substituting therefor the following new subsection—

(7) The Commissioner may, upon an application under subsection (6) or on his own motion, remit in whole or in part, any penalty or interest payable by a person, except a penalty imposed under section 85, if satisfied that the remission is by reason of -

- (a) consideration of hardship or equity; or
- (b) impossibility or undue difficulty or expense, of recovery of the tax:

Provided that the Commissioner shall—

- (i) where the amount of the penalty or interest exceeds one million five hundred thousand shillings, seek prior approval of the Cabinet Secretary; and
- (ii) make quarterly reports to the Cabinet Secretary on the remissions granted under this section.

**47.** The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 103—

Insertion of sections 103A and 103B in No. 29 of 2015.

Unauthorized access or improper use of computerized tax system.

**103A.** (1) A person who—

- (a) knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any computerized tax system;
- (b) having lawful access to any computerized tax system, knowingly uses or discloses information obtained from such system for a purpose that is not authorised; or

(c) knowing that he is not authorized to do so, receives information obtained from any computerized tax system, and uses, discloses, publishes, or otherwise disseminates such information, commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable—

(a) in the case of a natural person, to imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or

(b) in the case of a body corporate, to a fine not exceeding one million shillings.

Interference with computerized tax system.

**103B.** (1) A person who knowingly—

(a) falsifies any record or information stored in any computerized tax system;

(b) damages or impairs any computerized tax system; or

(c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a computerized tax system is held or stored otherwise than with the permission of the Commissioner,

commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

**48.** Section 104 of the Tax Procedures Act, 2015 is amended in subsection (2) by deleting the word “and” and substituting therefor the word “or”.

Amendment of section 104 of No. 29 of 2015.

## **PART VI—MISCELLANEOUS FEES AND LEVIES**

**49.** Section 2 of the Miscellaneous Fees and Levies

Amendment of section

Act, 2016 is amended—

2 of No. 29 of 2016.

- (a) by deleting the word “or” and adding the words “or special economic zone” at the end of the definition of the word “export”; and
- (b) by inserting the following new definition in proper alphabetical sequence—

“Special Economic Zone” has the meaning assigned to it under the Special Economic Zones Act, 2015.

**50.** The First Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended in Part I by inserting the following new item in its proper sequence—

Amendment of First Schedule to No. 29 of 2016.

| <i>Tariff No.</i> | <i>Tariff Description</i> | <i>Export Levy Rate</i> |
|-------------------|---------------------------|-------------------------|
| 7404.00.00        | Copper waste and scrap    | 20%                     |

**51.** The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended—

Amendment of Second Schedule to No. 29 of 2016.

- (a) in Part A, by adding the following new paragraph immediately after paragraph (xxii)—
  - (xxiii) goods imported for implementation of projects a under special operating framework arrangement with the Government.
- (b) in Part B by adding the following new paragraph immediately after paragraph (vi) -
  - (vii) goods imported for implementation of projects under a special operating framework arrangement with the Government.

#### **PART VII—MISCELLANEOUS**

**52.** The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 5—

Insertion of section 5A in Cap. 131.

Fit and proper criteria for casinos.

**5A.** (1) The Board shall, in determining whether an applicant is suitable to hold a licence or permit under this Act, consider-

- (a) the financial status or solvency of the person;

- (b) the educational or other qualifications or experience of the applicant having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) the status of any other licence or approval granted to the applicant by any financial sector regulator;
- (d) the ability of the applicant to carry on the regulated activity competently, honestly and fairly; and
- (e) the reputation, character, financial integrity and reliability -
  - (i) in the case of a natural person, of that person; or
  - (ii) in the case of a company, of the company, its chairperson, directors, chief executive, management and all other personnel, including all duly appointed agents, and any substantial shareholder of the company, if the chairperson, director, chief executive, management or the personnel are shareholders of the company.

(2) Without prejudice to the generality of subsection (1), the Board may, in considering whether an applicant is fit and proper -

- (a) take into account whether the applicant -
  - (i) has contravened any law in Kenya or elsewhere designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by

- persons engaged in transacting with marketable securities;
- (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
  - (iii) has taken part in any business practice which, in the opinion of the Board, was fraudulent, prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the applicant's methods of conducting business;
  - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that applicant; or
  - (v) has acted in such a manner as to cast doubt on the applicant's competence and soundness of judgment;
- (b) take into account any information in the possession of the Board, whether provided by the applicant or not, relating to -
- (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent; and
  - (ii) where the applicant is a company in a group of companies, any other company in the same group of companies, or any substantial shareholder or key personnel of the company or any company referred to under this

subparagraph;

- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the applicant carries on or purports to carry on.

(3) The Board shall give the applicant an opportunity to be heard before determining whether the applicant is fit and proper for the purposes of this Act.

(4) An applicant who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit commits an offence and shall, upon conviction, be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of this section, "group of companies" means any two or more companies, one of which is the holding company of the others.

**53.** The Betting, Lotteries and Gaming Act is amended by inserting the following new sections immediately after section 69—

Insertion of new section 69A and 69B in Cap. 131.

Taxes to be paid into fund.

**69A.** The Collector shall pay all the proceeds of tax paid under sections 29A (2), 44A (2), 55A (2) and 59B (2) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

Late payment penalty and interest.

**69B.** (1) Subject to subsection (2), a person who fails to pay a tax imposed under sections 29A, 44A, 55A and 59B, on the due

date shall be liable—

(a) to a late payment penalty of twenty per cent of the tax payable; and

(b) to a late payment interest at a rate equal to two per cent per month or part of a month on the amount unpaid for the period until the tax is paid in full.

(2) The late payment interest payable under this section shall be computed as simple interest.

(3) The late payment penalty or interest shall be payable to the Collector and shall be treated as a tax payable by the person liable for the tax.

(4) The accrued late payment interest shall not, in aggregate, exceed the principal tax liability.

(5) A person liable to a late payment penalty or interest may apply in writing to the Collector for the remission of the penalty or interest payable and such application shall include the reasons for the application.

(6) The Collector may, upon an application under subsection (5) or on his own motion, remit in whole or in part, late payment penalty or interest payable by a person if satisfied that the remission is by reason of—

(a) consideration of hardship or equity; or

(b) impossibility or undue difficulty or expense, of recovery of tax:

Provided that -

(i) where the amount of the penalty or interest exceeds one million five hundred thousand shillings, the collector shall seek prior approval of the Cabinet Secretary responsible for

finance; and

- (ii) make quarterly reports to the Cabinet Secretary responsible for finance on the remissions granted.

**54.** Section 2 of the Marine Insurance Act is amended by inserting the following new definition in proper alphabetical sequence—

Amendment of section 2 of Cap. 390.

“Commissioner” has the meaning assigned to it in section 2 (1) of the Insurance Act.

**55.** Section 16A of the Marine Insurance Act is amended by deleting the words “this Act” appearing immediately after the words “registered under” and substituting therefor the words “the Insurance Act”.

Amendment of section 16A of Cap. 390.

**56.** Section 3 of the Air Passenger Service Charge Act is amended in subsection (3) by deleting the words “Kenya Airport Authority and the Kenya Civil Aviation Authority” and substituting therefor the words “Kenya Airports Authority, the Kenya Civil Aviation Authority and the Tourism Promotion Fund.”

Amendment of section 3 of Cap. 475.

**57.** Section 117 of the Stamp Duty Act is amended in subsection 1 by adding the following new paragraphs immediately after paragraph (l) -

Amendment to section 117 of the Cap. 480.

- (m) an instrument executed for purposes of collection and recovery of tax,
- (n) an instrument relating to the business activities of special economic zone enterprises, developers and operators licenced under the Special Economic Zones Act, 2015.

**58.** The Banking Act is amended by repealing section 33B.

Repeal of section 33B of Cap. 488.

**59.** Section 62 of the Co-operative Societies Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (c) -

Amendment of section 62 of Cap. 490.

(d) had its deposit-taking license revoked under the Sacco Societies Act, 2008.

**60.** Section 2 of the Central Bank of Kenya Act is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of Cap. 491.

“mortgage refinance business” means the business of providing long term financing to primary mortgage

lenders for housing finance and any other activity that the Bank may from time to time prescribe;

“mortgage refinance company” means a non-deposit taking company established under the Companies Act, 2015 and licensed by the Bank to conduct mortgage refinance business; and

“specified mortgage refinance company” means a licensed mortgage refinance company within the meaning of section 33P, which is specified by the Bank for the purposes of the Act.

**61.** Section 4A of the Central Bank of Kenya Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (f)—

Amendment of section 4A of Cap. 491.

(g) license and supervise mortgage refinance companies.

**62.** The Central Bank of Kenya Act is amended by inserting the following new Part immediately after Part VIA—

Insertion of a new Part VIB in Cap. 491.

### **PART VIB—MORTGAGE FINANCING BUSINESS**

Licensing.

**33P.** (1) A person shall not engage in mortgage refinance business unless that person has been licensed by the Bank.

(2) An application for a licence under in subsection (1) shall be made to the Bank in the prescribed form and accompanied by the prescribed fee.

(3) A person who contravenes the provision of subsection (1) commits an offence.

Powers of the Bank.

**33Q.** (1) The Bank shall have the following powers with respect to the regulation of mortgage refinance companies—

- (a) to license mortgage refinance companies;
- (b) to determine the capital adequacy standards and requirements for mortgage refinance companies;
- (c) to prescribe the minimum liquidity requirements and permissible

- investments for mortgage refinance companies;
- (d) to supervise mortgage refinance companies, including –
    - (i) conducting both on-site and off-site supervision;
    - (ii) assessing professional and moral suitability of persons managing or controlling the mortgage refinance companies;
    - (iii) approving the Board and management of the mortgage refinance companies;
    - (iv) approving the appointment of the external auditors;
    - (v) collecting regular data from mortgage refinance companies;
    - (vi) approving the annual audited accounts of mortgage refinance companies before publication and presentation at the annual general meetings;
  - (e) to revoke or suspend a licence;
  - (f) to direct or require such changes as the Bank may consider necessary; and, and
  - (g) to take any other action as the Bank may consider necessary.

**63.** Section 43 of the Central Bank of Kenya Act is amended in subsection (1) by inserting the words “specified mortgage refinance companies” immediately after the words “specified microfinance banks”.

Amendment of section 43 of Cap.491.

**64.** Section 57 of the Central Bank of Kenya Act is amended in subsection (1) by inserting the words “,issue guidelines, circulars and directives” immediately after the word “regulations”.

Amendment of section 57 of Cap. 491.

**65.** The First Schedule to the Kenya Revenue Authority Act, 1995 is amended in Part II by adding the following new paragraph immediately after paragraph 13—

Amendment of First Schedule to No. 2 of 1995.

14. Public Finance Management Act, 2012.

**66.** Section 34 of the Retirement Benefits Act, 1997 is amended by deleting subsection (4C) and adding the following new subsections—

Amendment of section 34 of No. 2 of 1997.

(4C) A trustee who fails to submit a copy of audited accounts of the scheme to the Chief Executive Officer by the due date shall pay a penalty of one hundred thousand shillings and where the returns remain un-submitted, the trustee, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the returns remain unsubmitted:

Provided that a person who pays a penalty under this subsection may also be liable to prosecution in court under subsection (4A).

(4D) A fund manager who fails to submit an investment return of a scheme to the Chief Executive Officer by the due date shall pay a penalty of ten thousand shillings and where the returns remain un-submitted, the fund manager, in addition to the prescribed penalty shall pay a further fine of one thousand shillings for every day or part thereof during which the returns remain unsubmitted.

(4E) An administrator who fails to submit contribution returns of a scheme to the Chief Executive Officer by the due date shall pay a penalty of ten thousand shillings and where the returns remain un-submitted, the administrator, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for every day or part thereof during which the returns remain unsubmitted.

**67.** The Retirement Benefits Act, 1997 is amended by inserting the following new section immediately after section 53A—

Insertion of a new section 53B in No. 2 of 1997

Powers to recover unremitted contributions.

**53B.** Notwithstanding the provisions stated under section 53A, where there is non-remittance of the contribution by the

employer, the Authority shall—

- (a) require the employer to—
  - (i) pay the contributions and interest accrued to the scheme in full within the period specified in the notice and a penalty of five per cent of unremitted contributions or twenty thousand shillings whichever is higher, payable to the Authority within seven days of receipt of the notice;
  - (ii) pay the penalty specified in paragraph (a) (i) and submit to the Authority for approval a remedial plan providing the period within which the accumulated contributions and interest thereon shall be offset; or
  - (iii) immediately cease further deductions from employees' emoluments and notify all the members of the scheme of the cessation:

Provided that -

- (A) the Authority may lift the cessation order where it is satisfied that the employer is able to remit the employee emoluments as and when they fall due;
- (B) where there is a failure by an employer to comply with a direction to cease deductions from employees' emoluments under this provision, the Authority shall take the necessary action or issue such other directions as

it may deem necessary and expedient in protecting the interests of the members, including instituting summary proceedings to recover the amounts due to the scheme; and

- (b) initiate the process of winding up the scheme and facilitate members to join individual schemes where their contributions shall be remitted.

**68.**Section 31 of the Employment Act is amended by inserting the following new subsection immediately after subsection (2) –

Amendment of section 31 of No. 11 of 2007

(2A) An employer shall pay to the National Housing Development Fund in respect of each employee in his or her employment subject to a maximum of five thousand shillings –

- (a) the employer's contribution at zero point five percent of the employee's monthly gross emoluments; and
- (b) the employee's contribution at zero point five percent of the employee's earnings deducted from the employee's earnings.

**69.**Section (2) (1) of the Accountants Act, 2008 is amended—

Amendment of No. 15 of 2008.

- (a) by deleting the definition of the word "Minister" and substituting therefor the following new definition—

"Minister" means the Cabinet Secretary responsible for matters relating to finance; and

- (b) by inserting the following new definition in proper alphabetical sequence—

"company" has the meaning assigned to it under section 2 of the Companies Act, 2015.

**70.**The Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended by inserting the following new section immediately after section 45—

Insertion of section 45A in No. 9 of 2009.

Higher risk countries.

**45A.** (1) A reporting institution shall apply enhanced customer due diligence on business relationships and transactions with any natural and legal persons, legal arrangements or financial institutions originating from countries identified as posing a higher risk of money laundering, terrorism financing or proliferation by—

- (a) the Financial Action Task Force (FATF) as having strategic money laundering and combating financing of terrorism deficiencies, that have not made sufficient progress in addressing the said deficiencies or have not committed to an action plan to address the deficiencies; or
- (b) the Cabinet Secretary as having ongoing substantial money laundering and terrorism financing risks.

(2) In addition to enhanced customer due diligence measures, a reporting institution shall apply appropriate countermeasures, proportionate to the risk presented by countries subject to a Financial Action Taskforce (FATF) public statement or as advised by the Cabinet Secretary.

(3) In order to protect the financial system from the ongoing and substantial money laundering or terrorism financing risks emanating from the jurisdictions referred to under subsection (2), a reporting institution shall apply countermeasures including—

- (a) limiting or terminating business relationships or financial transactions with natural and legal persons, legal arrangements, or financial institutions located in the concerned countries;
- (b) prohibiting reliance on third parties located in the concerned countries to conduct customer due diligence;
- (c) applying enhanced due diligence measures on correspondent banking

- relationships with financial institutions located in the concerned countries;
- (d) when considering the establishment of subsidiaries or branches or representative offices of financial institutions from the concerned countries, take into account whether the financial institution is based in countries identified as having higher money laundering or terrorism financing risks or inadequate money laundering or terrorism financing systems;
  - (e) submit a report listing customers, both natural and legal persons, and legal arrangements, originating from the higher risk countries to the Financial Reporting Centre on an annual basis; and
  - (f) any other measures as may be specified by the Financial Reporting Centre.

**71.** The First Schedule to the Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended in paragraph 1 by adding the following new subparagraph immediately after subparagraph (h)—

Amendment of  
First Schedule to  
No. 9 of 2009.

- (i) Sacco Societies Regulatory Authority.

## MEMORANDUM OF OBJECTS AND REASONS

The Bill formulates the proposals announced in the Budget for 2018/2019 relating to liability, and collection of taxes and matters incidental thereto.

The Bill also seeks to amend the following laws—

### **The Betting, Lotteries and Gaming Act (Cap. 131)**

The Betting, Lotteries and Gaming Act (Cap.131). The Bill seeks to amend the Betting, Lotteries and Gaming Act to require that the tax collected under sections 29A, 44A, 55A and 59B of the Act be paid into the Sports, Arts and Social Development Fund.

### **The Marine Insurance Act (Cap. 390)**

The Bill seeks to amend the Marine Insurance Act to define the term “Commissioner” being referred to in the Act for clarity.

### **The Air Passengers Service Charge Act (Cap. 475)**

The Bill seeks to make necessary amendment to the Air Passengers Service Charge Act to include the Tourism Promotion Fund as one of the institutions to benefit from the proceeds of air charge imposed under section 3(1) of the Act.

### **The Stamp Duty Act (Cap. 480)**

The Bill seeks to amend the Stamp Duty Act to exempt from duty all instruments executed for purposes of collection and recovery of tax.

### **The Banking Act (Cap. 488)**

The Bill seeks to amend the Banking Act to review the capping of interest rate to ensure access to credit facilities across the economy, especially among the lower income retail consumers and small and medium enterprises. This is aimed at minimizing the adverse impact on credit growth, financial access and monetary policy effectiveness.

### **The Co-operative Societies Act (Cap. 490)**

The Bill seeks to amend the Act to provide for the legal basis to trigger the cancellation of the registration upon the revocation of a license by the Authority.

### **The Central Bank Act (Cap. 491)**

The Bill seeks to amend the Central Bank of Kenya Act to provide powers to the Bank to regulate mortgage refinance business and to bring mortgage refinance companies within the Bank’s reporting framework.

**The Kenya Revenue Authority Act (No. 2 of 1995)**

The Bill seeks to amend the Kenya Revenue Authority Act to provide for a legal mechanism for collection of surplus funds from the regulatory bodies and timely payment of the same to the National Treasury.

**The Retirement Benefits Act (No. 2 of 1997)**

The Bill seeks to amend the Retirement Benefits Act to deal with penalties payable for late submission of investment returns and contribution returns by the Fund manager and administrator respectively. This is intended to increase the compliance with timely submission of all statutory returns under the Act and Regulations made thereunder. The amendment will further ensure that trustees meet their fiduciary and a strong deterrent with non-compliance within schemes.

**The Accountants Act (No. 15 of 2008)**

The Bill seeks to amend the Accountants Act by defining the term “Minister” to mean the “Cabinet Secretary” in line with the terminology used in the Constitution.

**The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)**

The Bill seeks to amend the Act by introducing a requirement for reporting institutions to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions originating from higher risk countries when called upon by the Financial Action Taskforce (FATF) through its public statement or when independently identified by the country authorities.

**The Public Finance Management Act (No. 18 of 2012)**

The Bill seeks to amend section 24 of the Public Finance Management Act to empower the Cabinet Secretary for the National Treasury and Planning to, through Regulations, designate an incorporated or unincorporated entity as the administrator of a national public Fund for efficient and effective management.

**The Tax Appeals Tribunal Act (No. 40 of 2013)**

The Bill seeks to amend the Tax Appeals Tribunal Act to streamline time of appeal as specified in section 55 of the Tax Procedure Act and section 13(7) of the Tax Appeals Tribunal. Further, the amendment proposed is to ensure expeditious dispensation of the appeal proceedings.

This Bill is not a Bill concerning county government.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 19th June, 2018.

JOSEPH LIMO,  
*Chairperson, Departmental  
Committee on Finance and National Planning.*

*Section 33B of the Banking Act which it is intended to repeal—*

### **33B Powers of Central Bank**

(1) A bank or a financial institution shall set —

- (a) the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Central Bank of Kenya; and
- (b) the minimum interest rate granted on a deposit held in interest earning in Kenya to at least seventy per cent, the base rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

(3) A bank or financial institution which contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or in default, the Chief Executive Officer of the bank or financial institution shall be liable to imprisonment for a term not less than one year.

*Section 62 (1) of the Co-operative Societies Act which it is intended to amend—*

(1) Where a co-operative society has—

- (a) less than the prescribed number of members; or
- (b) failed to file returns with the Commissioner for a period of three years; or
- (c) failed to achieve its objects, the Commissioner may, in writing, order the cancellation of its registration and dissolution of the society and the order shall take effect immediately.

*Section 43 (1) of the Central Bank of Kenya Act which it is intended to amend—*

### **43. Information to be furnished by specified banks, etc.**

(1) Every specified bank, specified financial institution and specified microfinance bank shall furnish to the Bank, at such time and in such manner as the Bank may prescribe, any information and data the Bank may reasonably require for the proper discharge of its functions under this Act.

*Section 57 (1) of the Central Bank of Kenya Act which it is intended to amend—*

**57. Regulations by the Bank**

(1) The Bank may make regulations for the purpose of giving effect to the provisions of this Act and generally for the better carrying out of the objects of the Bank under this Act

*Part II of the First Schedule to the Kenya Revenue Authority Act, 1995 which it is intended to amend—*

1. Traffic Act (Cap. 403).
2. Transport Licensing Act (Cap. 404).
3. Second - Hand Motor Vehicles Purchase Tax Act (Cap. 484).
4. The Civil Aviation Act (Cap. 394).
5. The Widows' and Children's Pensions Act (Cap. 195).
6. The Parliamentary Pensions Act (Cap. 196).
7. The Betting, Lotteries and Gaming Act (Cap. 131).
8. The Stamp Duty Act (Cap. 480).
9. The Horticultural Crops Development Authority (Imposition of Fees and Charges) Order, 1995 (L.N. 228 of 1995).
10. The Standards Levy Order, 1990 (L.N. 267 of 1990).
11. The Government Lands Act (Cap. 280)
12. The Sugar Act (No. 10 of 2001).
13. The National Social Security Fund Act, 2013.

*Section 34 (4C) of the Retirement Benefits Act, 1997 which it is intended to amend—*

(4C) Despite the provisions of subsection (4B), the Authority shall require a person who fails to submit any statutory return by the due date to the Authority to pay a penalty of one hundred thousand shillings and where the returns remain un-submitted, the person, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the offence continues:

Provided that a person who pays a penalty under this subsection shall not be prosecuted in court for the same offence.

*The First Schedule to the Proceeds of Crime and Anti-Money Laundering Act, 2009 which it is intended to amend—*

1. The following institutions are the supervisory bodies referred to in section 2—

- (a) Central Bank of Kenya;
- (b) Insurance Regulatory Authority;
- (c) Betting and Licensing Control Board;
- (d) Capital Markets Authority;
- (e) Institute of Certified Public Accountants of Kenya;
- (f) Estate Agents Registration Board;
- (g) Non-Governmental Organizations Co-ordination Board;
- (h) Retirement Benefits Authority.