SPECIAL ISSUE

Kenya Gazette Supplement No. 36 (National Assembly Bills No. 13)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2018

NAIROBI, 10th April, 2018

CONTENT

Bill for Introduction into the National Assembly --

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 ... 409
A Bill for

AN ACT of Parliament to make various amendments to statute law

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) (No. 2) Act, 2018.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column.

SCHEDULE

Written Law Provision Amendment

The Betting s. 2 Delete the definition of the expression Lotteries and “Permanent Secretary” and substitute therefor the Gaming Act following new definition— (Cap. 131)

“Permanent Secretary” means the Principal Secretary in the Ministry for the time being responsible for betting, lotteries and gaming.

Insert the following new definition in proper alphabetical sequence—

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to betting, lotteries and gaming.

s.3 (2A) Insert the words “for one further term” at the end thereof.

s. 3(10) Delete and substitute therefor the following new subsection—

“(10) All permits and licences issued under this Act and all communications from the Board shall be under the hand of the Chairman or of the Director of Betting and Gaming appointed by the Public Service Commission on authorization by the Minister or the Permanent Secretary.
s. 5(3) Delete the expression “local authority” appearing in paragraph (ii) of the proviso and substitute therefor the expression “county government”.

s.5(4) Delete the expressions “five thousand shillings” and “six months” and substitute therefor the expressions “one million shillings” and “three years” respectively.

s.6(1) Delete the expression “forty thousand” and substitute therefor the expression “twenty million”.

s.8(3) Delete the expressions “three thousand” and “three months” and substitute therefor the expressions “five hundred thousand” and “two years” respectively.

s.10(2) Delete the expressions “ten thousand” and “one year” and substitute therefor the expressions “ten million” and “five years” respectively.

s.11(4) Delete the expressions “ten thousand” and “one year” and substitute therefor the expressions “one million” and “five years” respectively.

s.29A(1) Delete the expression "thirty-five" and substitute therefor the word “fifteen”.

s.36(1) Delete—

(a) the words "twenty-five" appearing in paragraph (b) and substitute therefor the word “five”; and

(b) the expressions—

(i) "twenty-five" and substitute therefor the word “five”; and

(ii) "forty-five" and substitute therefor the expression “twenty-five”.

(2) Delete the expression "twenty-five" and substitute therefor the word “five”.

s.44A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.53(1) Delete the expression “five thousand” and “six months” and substitute therefor the expressions “two million” and “two years” respectively.
s.54(2)(b) Delete the expression "one shilling" and substitute therefor the expression "fifty thousand".

s.55(1) Delete the expressions "three thousand" and "three months" and substitute therefor the expressions "one hundred thousand" and "one year" respectively.

s.55A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.59B(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.59(2) Delete the expressions "ten thousand" and "one year" and substitute therefor the expressions "one million" and "five years" respectively.

s.61 Delete the expressions "five thousand" and "six months" and substitute therefor the expressions "five hundred thousand" and "two years" respectively.

The Dairy Industry Act (Cap. 336)

s.3 Insert the words "goat or camel whether in liquid, solid or any other form" immediately after the word "cow" appearing in the definition of "milk".

Insert the word "imports" immediately after the word "manufactures" appearing in the definition of "producer".

s.19(e) Delete and substitute the following new paragraph—

"(e) the manner of collection of the dairy regulatory levy referred to in section 23A."

New Insert the following new paragraphs immediately after paragraph (v)—

"(w) prescribing the requirements for the licensing of milk dispensers and other dispensers of other dairy produce;

(x) prescribing the manner of handling, storage, dispensing and the general management dairy produce."

s.20 Insert the following new paragraphs immediately after paragraph (e)—
“(f) punishment for a fine not exceeding three million shillings or a term of imprisonment not exceeding three years or both.”

New

Insert the following new section immediately after section 23—

Dairy regulatory levy.

23A. (1) There shall be payable to the Board by every producer a dairy regulatory levy at the rate of one per centum of ex-factory price per kilogram of marketed processed milk and milk products.

(2) Despite subsection (1), a county government may, pursuant to Article 209(3) (c), impose a cess, payable to the county government on any milk or milk product produced within the county.

s.31

Insert the words “or an import” immediately after the word “produces” appearing in the definition of “primary producer”.

s.33

Delete the expression “two thousand shillings” and substitute therefor the expression “one million shillings or imprisonment for a term not exceeding one year or to both”

The Co-operative Societies Act, (Cap. 490)

s.2

Insert the following new definition on proper alphabetical sequence—

“social impact member” means a member belonging to a class established under section 17(2);

s.17

Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1)—

(2) The annual general meeting of a co-operative society may resolve by ordinary resolution to create a class of social impact members of the co-operative society.

(3) The social impact members under
subsection (2) shall be exempted from payment to the society in respect of membership of the society.

(4) A resolution of the annual general meeting of a co-operative society under subsection (2) shall be subject to the approval of the Cabinet Secretary.

s.19 Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1)—

(2) Notwithstanding subsection (1), social impact members shall only vote on resolutions relating to the special fund, the investment committee, the special fund trustee and the matters incidental thereto.

(3) The members of the society, other than social impact members shall not be entitled to vote on matters reserved for the social impact members.

s.21(a) Insert the expression “subject to section 19(2) and 19(3) of this Act,” at the beginning of the paragraph.


The Title Delete the word “Hospital” and substitute therefor the word “Health”.

Long Title. Delete the word “Hospital” wherever it appears and substitute therefor the word “Health”.

s.1 Delete the word “Hospital” and substitute therefor the word “Health”.

s.2. Delete the word “Hospital” appearing in the definition of the term “Board” and substitute therefor the word “Health”.

Delete the word “Hospital” appearing in the
definition of the term “card” and substitute therefor the word “Health”.

Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”.

Delete the definition of the word “Minister” and substitute therefor the following new definition—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health.

s.3(1) Delete the word “Hospital” and substitute therefor the word “Health”.

(2)(a) Delete and substitute therefor the following paragraph—

(a) into the Fund—

(i) contributions under section 15;

(ii) employer contributions matching the employee’s contributions;

(iii) such monies as may be appropriated by the National Assembly out of the Consolidated Fund, for persons certified by the Board to be unable to pay the contributions;

(iv) gifts, grants or donations;

(v) funds from the National Government, County Governments or employers for the administration of employee benefits; and

(vi) funds from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so;

s.4(1) Delete the word “Hospital” and substitute therefor the word “Health”.

(1) Delete paragraph (e) and substitute therefor the
following paragraph—

(e) one person from the public sector with knowledge and expertise in health appointed by the Cabinet Secretary taking into account diversity, gender, skills and regional balance.

s.4(1)(f) Delete and substitute therefor the following new paragraph—

“(f) five persons appointed by the Cabinet Secretary based on relevant knowledge and experience on the subject matter.”

(g) Delete.

(h) Delete.

(i) Delete.

(j) Delete.

Insert the following paragraph immediately after paragraph (j)—

(k) one person nominated by the Council of Governors with knowledge and experience relating to health.

s.5(1) Insert the following new paragraph immediately after paragraph (f)—

(fa) to administer employee benefits on behalf of the national government, the county governments and employers in respect of their employees.

s.10 Insert the following subsection immediately after subsection (1A)—

(1B) The Chief Executive Officer shall serve the Fund for a term prescribed by the Board and shall be eligible for reappointment for a further term, subject to satisfactory performance of assigned functions.

s.15(2) Insert the following paragraphs immediately after paragraph (b)—

(c) in the case of a contribution by the
employer, the employer to match the contribution of the employee; and

(d) in the case of a person certified by the Board to be unable to pay the contributions, such contribution payable by the Government, as may be determined by the Board in consultation with the Cabinet Secretary.

s.16(3)(c) Delete.

(4) Delete and substitute therefor the following subsection—

(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that employee, after it has been remitted to the Fund.

s.21(5)(a) Delete.

s.22(3) Insert the words “and optical services” immediately after the words “boarding costs”.

s.23(1) Delete and substitute therefor the following subsection—

(1) The Board shall maintain a register of the names of all contributors, the particulars of every contributor as contained on the card issued to the contributor and particulars of all contributions or other payments to the Fund by or in respect to a contributor.

(2) Delete.

s.24 Delete.

s.25(2)(b) Delete.

(2)(c) Delete.

(3) Delete.

s.26(a) Delete and substitute therefor the following paragraph—

(a) any matters incidental to payment and
collection of any contribution under this Act or to the issue or replacement of cards under this Act.

s.30 Insert the following new subsection immediately after subsection (1)—

(1A) The Board may negotiate and enter into contracts with overseas specialized healthcare providers for the provision of specialized treatment not available in the country.

(3) Delete and substitute therefor the following new subsection—

(3) The Board may from time to time negotiate and enter into contracts with health service providers who qualify under subsection (4) of this section for the provision of health services to the members of the Fund.

Insert the following new subsections immediately after subsection (3)—

(4) The Board shall, by notice in the Gazette and in such other manner as the Board may deem appropriate, declare the health service providers referred to in subsection (1) to be contracted health service providers for purposes of this Act.

(5) A declaration under this section shall be subject to fulfilment by the health service provider of such criteria, including meeting quality standards set by the Ministry.

(6) Every contracted health service provider shall be issued with such identification as may be prescribed by the Board and such identification shall be displayed in a conspicuous position in the health services providers premises.

(7) The Board shall terminate the contract with any health service provider where such health service provider fails to meet the criteria prescribed under subsection (5).

(8) Upon termination of a contract under
subsection (7), the Board shall, by notice in the Gazette, revoke the declaration made under subsection (4).

(9) Any health service provider which displays the identification referred to in subsection (6) without the authority of the Board commits an offence.

s.34(1) Insert the following new paragraph immediately after paragraph (b)—

(c) in quoted equities, fixed income, property, guaranteed funds, fixed deposits accounts and government securities as may be approved by the National Treasury:

s.36 Delete and substitute therefor the following new section—

36. There shall be paid out of the Fund, expenditure for administration purposes in respect of any financial year, which monies shall not exceed fifteen per centum of the total annual expenditure of the Fund.

s.43 Delete the words “Workmen’s Compensation Act” and substitute therefor the expression “Work Injury Benefits Act (Cap. 236)”.

First Schedule, paragraph 1. Delete the word “Hospital” appearing in the definition of the term “appointed day” and substitute therefor the word “Health”.

Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”.

The Long Statistics Title. Insert the word “official” immediately after the words “dissemination of”.

Act (No. 4 of 2006). s.2. Delete the definition of the word “Minister”.

Delete the definition of the word “national statistical system” and substitute therefor the following new definition—

“national statistical system” includes producers,
suppliers and users of official statistics working under the supervision and co-ordination of the Bureau including counties, ministries, departments and agencies.

Delete in the definition of the expression “population and housing census”, the word “Board” and substitute therefor the word “Bureau”.

Insert the following new definitions in proper alphabetical sequence—

“Agency” includes individuals, institutions or groups of persons;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to statistics;

“coordination” includes technical advice to ensure that standards and methods are met and adherence to the code of practice in statistical production and dissemination;

“official statistics” means statistics produced by the Bureau and any other statistics designated as official by the Director-General;

“Government” means the national and county governments;

“professional independence” means independence of production and dissemination of statistics from interference or influence by any individual, interest group or political authority;

“sampling frame” includes a representative list of items that form a population from which a sample is drawn for the purpose of conducting a survey and includes individuals, households or institutions and may be a National Sample Survey and Evaluation Programme, the Business Register or any other frame of the Bureau.

New. Insert the following new sections immediately after section 3—

3A. The Bureau may request for legal advice or representation from the Attorney-General.

Professional 3B. The Bureau shall have
The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018

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Independence. professional independence and shall observe the fundamental principles relating to statistics as set out in the Fourth Schedule.

Headquarters of the Bureau.

3C. The Bureau shall have its headquarters in Nairobi but may establish any other offices in the country for the discharge of its functions.

s.4(2) Delete the word “promoting” appearing in paragraph (b) and substitute therefor the word “ensuring”.

Insert the following new paragraphs immediately after paragraph (e)—

(f) developing and maintaining sampling frames of the Bureau; and

(g) collaborating with and assisting the county governments or any other institutions in the production of official statistics.

s.5(1) Delete the word “Permanent” wherever it appears and substitute therefor the word “Principal”.

(d) Delete the word “five” and substitute therefor the word “six”.

Delete the word “Minister” and substitute therefor the expression “Cabinet Secretary”.

Delete the words “Coordinating Agency” appearing in subparagraph (v) and substitute therefor the word “Council”.

Insert the following new subparagraph immediately after subparagraph (v)—

(vi) one person nominated by the Council of Governors.

s.5(3) Insert the words “meets the requirements of Chapter Six
of the Constitution and” immediately after the words “such person”.

s.6(1) Delete paragraph (d) and substitute therefor the following new paragraph —

(d) promote professionalism by facilitating professional training and ensuring discipline among the staff.

Delete the word “Minister” and substitute therefor the expression “Cabinet Secretary”.

s.8(2) Insert the words “and meets the requirements of Chapter Six of the Constitution” immediately after the words “such person”.

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

(4)(a) Delete and substitute therefor the following new paragraph —

(a) Be responsible for the day-to-day management of the Bureau, and specifically for —”

Insert the following new subparagraphs immediately after paragraph (a) —

(i) formulating quality criteria and establish standards, classifications and procedures for production and dissemination of statistics;

(ii) providing technical advice on statistics to other state entities;

(iii) promoting coordination among producers, users and suppliers of official statistics by forming appropriate sector committees; and

(iv) designating statistics produced by the national statistical system as official statistics on being satisfied that the necessary criteria have been followed.

Insert the following new section immediately after
section 8 —

Corporation Secretary.

8A. (1) There shall be a Corporation Secretary of the Bureau who shall, subject to this section, be appointed by the Board on such terms and conditions of service as the Board may determine.

(2) A person shall not be appointed as Corporation Secretary unless such person—

(a) holds a postgraduate degree in law from a recognized university;

(b) is an advocate of the High Court of not less than eight years standing;

(c) holds a certified public secretaries’ qualification from a recognized institution; and

(d) meets the requirements of chapter Six of the Constitution.

(3) The Corporation Secretary shall, subject to the direction of the Board be responsible for —

(a) coordinating and circulating the preparation of Board papers to members of the Board;

(b) taking minutes in meetings of the Board and ensuring the implementation of resolutions of the Board;

(c) ensuring safe custody of the minutes, decisions and documents of the Board;

(d) ensuring the safe custody of the seal of the Bureau;

(e) drafting legal documents on behalf
of the Bureau;

(f) attending proceedings on behalf of
the Bureau;

(g) advising the Board on any legal
matters; and

(h) any other matter that the Board may
direct.

s.13 Delete the word “Minister” and substitute therefor the
expression “Cabinet Secretary”.

Insert the word “National” immediately before the word
“Treasury”.

s.17 Delete the word “Minister” and substitute therefor the
expression “Cabinet Secretary”.

s.18(1) Delete the words “local level” and substitute therefor the
words “county level using the sampling frame and
infrastructure of the Bureau”.

s.19(3) Insert the words “or by electronic means” immediately
after the word “address”.

s.20 Insert the words “or entity or households” immediately
after the word “establishment”.

Delete the word “public”.

Delete the words “of any local authority”.

s.23 Insert the following new subsection immediately after
subsection (2)—

(3) The Director-General may, with the approval of
the Board, cause any official statistical data collected,
analyzed and disseminated by the Bureau to be cancelled,
revised or adjusted after ascertaining that the data is not
accurate.

s.24(1) Delete the expression “one hundred” and substitute
therefor the expression “five hundred”.

(2) Delete the expression “one hundred” and substitute
therefor the expression "five hundred".

s. 26 Insert the following new paragraphs immediately after paragraph (g) —

(h) redistributes or sells material of the Bureau without written authority from the Director-General;

(i) uses data from the Bureau for investigation of specific individuals or organizations or for any other purpose other than statistical purposes;

(j) creates links among datasets provided by the Bureau or among data from the Bureau and other datasets with a view to identifying individuals or organizations.

Delete the expression "one hundred" and substitute therefor the expression "five hundred".

s.29 Delete the word "Minister" and substitute therefor the expression "Cabinet Secretary".

First Schedule Delete the First Schedule and substitute therefor the following new Schedule —

**FIRST SCHEDULE**

(s. 4,23)

**MATTERS CONCERNING WHICH STATISTICAL INFORMATION MAY BE COLLECTED, COMPILED, ANALYSED, ABSTRACTED AND PUBLISHED.**

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<td>8</td>
<td>Finance and Insurance</td>
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<td>45.</td>
<td>Food security</td>
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<td>46.</td>
<td>Vital and other social statistics</td>
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<td>47.</td>
<td>Any other matter related to the above</td>
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Insert the following new Schedule immediately after the Third Schedule —

**FOURTH SCHEDULE (s.3B)**

**FUNDAMENTAL PRINCIPLES OF OFFICIAL STATISTICS**

**Principle 1.** Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by Kenya National Bureau of Statistics to honour citizens’ entitlement to public information.

**Principle 2.** To retain trust in official statistics, the Kenya National Bureau of Statistics will apply strictly the professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.
| Principle 3. | To facilitate a correct interpretation of the data, Kenya National Bureau of Statistics will present information according to scientific standards on the sources, methods and procedures of the statistics. |
| Principle 5. | Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Kenya National Bureau of Statistics will choose the source with regard to quality, timeliness, costs and the burden on respondents. |
| Principle 6. | Individual data collected by Kenya National Bureau of Statistics for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes. |
| Principle 8. | The Kenya National Bureau of Statistics will apply the international concepts, classifications and methods to promote the consistency and efficiency of the National Statistical System at all official levels. |

The Energy Act 2006 (No. 12 of 2006)

Insert the following new paragraph immediately after paragraph (d)—

(da) in collaboration with the County governments and other agencies, promote the development of appropriate local capacity for the manufacturing sector by facilitating the supply of electricity.
s.2 Insert the following new definitions in proper alphabetical sequence—

"Advisory Board" the Advisory Board constituted under section 47B(4)(c);

"eligible person" means a member of the Sacco society in which the relevant Special Fund has been established who satisfies the criteria set out in this Act, the regulations and the by-laws of the Sacco Society;

"Investment Committee" means a committee established under section 47B;

"social impact member" has the meaning assigned to it in the Co-operative Societies Act;

"Special Fund" means a fund established under section 47A;

"Special Fund Investment Policy" means the policy formulated by the Investment Committee to govern investments from the Special Fund; and

"Special Fund Trustee" means the trustee of the Special Fund constituted under section 47C.

s.38(1) Insert the following expression at the beginning of the subsection—

"Subject to Part IVA of the Act,"

New. Insert the following parts immediately after section 47—

PART IVA — THE SPECIAL FUND

47A. (1) A Sacco society may establish a fund to be known as the Special Fund.

(2) There shall be paid into the Special Fund monies received from the social impact members.

(3) The Investment Committee shall determine the amount of contribution into the Special Fund by social impact members.
(4) The Special Fund shall be applied towards—

(a) providing start-up and early stage financing to an eligible person with respect to viable innovations as assessed by the Investment Committee;

(b) the remuneration of the Special Fund Trustee and the members of the Investment Committee; and

(c) taxes, costs and other charges which may accrue as a result of operation of the Special Fund.

(5) Any investments from the Special Fund shall be in accordance with the Special Fund Investment Policy.

(6) A document involving a function under subsection (4) shall be validly executed if signed by the Special Fund Trustee, and a member of the Investment Committee who is authorized by the Investment Committee, and any further requirement stipulated in the by-laws of the Sacco society.

(7) All income from the Special Fund shall be distributed by the Special Fund trustee as approved by the Investment Committee among the social impact members pro rata their contribution to the Special Fund.

(8) The Sacco society shall have a first charge over things or articles produced with the aid of money lent to an eligible person from the Special Fund.

(9) The Sacco society shall have a first charge over the share or interest in the capital and on the deposits of an eligible person, and upon any dividend, bonus or accumulated funds payable to an eligible person in respect of any debt
due from such person to the Sacco society, and the Sacco society may set off any sum credited or payable to such eligible person towards the payment of any such debt.

(10) A Sacco society that establishes a Special Fund shall make such provisions under its by-laws for the better carrying out of this section.

PART IVB—THE INVESTMENT COMMITTEE

47B. (1) A Sacco society with a Special Fund shall establish an Investment Committee.

(2) The Investment Committee shall comprise of four members appointed by the social impact members.

(3) A person is qualified for appointment to the Investment Committee if that person—

(a) holds a degree in economics from a university recognized in Kenya;

(b) holds a degree in finance from a university recognized in Kenya;

(c) holds a degree in law from a university recognized in Kenya;

or

(d) holds a degree in the field of operation in which the Sacco society predominantly operates from a university recognized in Kenya.

(4) The members of the Investment Committee shall have at least six years professional experience in their above respective fields.

(5) The members of the Investment Committee shall not be members of the relevant Sacco society.
(6) The functions of the Investment Committee shall include—

(a) considering and approving applications by eligible persons for financing from the Special Fund;

(b) formulating the Special Fund Investment Policy;

(c) appointing such number of members to the Advisory Board as it deems necessary to provide relevant technical input, including: project management, legal and general advisory services to the eligible person in relation to a project financed with funds from the Special Fund;

(d) to determine the terms of reimbursement of all reasonable costs incurred by the Advisory Board; and

(e) to determine the provisions to be made for capital and recurrent expenditure for the operation of the Special Fund.

Special Fund Investment Policy. 47C. The Special Fund Investment Policy shall stipulate investment criteria to be applied by the investment committee including—

(a) the minimum and maximum investment amounts in any single eligible person;

(b) the investment rules and the investment process including minimum commitment and investment periods and procedures for draw down;

(c) exposure limits to individual eligible person;

(d) the preferred mode of divestiture from the eligible person;
(e) disclose a clear strategy for the diversification of investments in the eligible person; and

(f) criteria for determining whether an investment shall be by way of debt or equity.

PART IVC—THE SPECIAL FUND TRUSTEE

47D. (1) A Sacco society with a Special Fund shall have a Special Fund Trustee.

(2) A Special Fund Trustee shall be appointed by the social impact members on such terms the social impact members shall deem necessary.

(3) A Special Fund Trustee shall—

(a) be a body corporate having a paid-up capital of not less than five million Kenya Shillings;

(b) be empowered by its memorandum and articles of association to undertake trusts;

(c) not be a member of the relevant Sacco society; and

(d) have a demonstrable track record of at least three years as a trustee or in the alternative, one or more of its directors or partners shall have a demonstrable track record in the management of a trust for a period of at least three years.

(4) The functions of the Special Fund Trustee shall include—

(a) taking into custody the special fund, any income accruing to it and any security furnished pursuant to any investment made from the Special Fund and holding such funds, income or
security for the benefit of social impact members;

(b) managing, controlling and administering the Special Fund in such manner and for such purpose as best promotes the objects for which the Special Fund is established;

(c) investing any monies of the Special Fund not immediately required for the purposes for which the Special Fund is established;

(d) keeping proper books and records of account with respect to income, expenditure, liabilities and assets of the Special Fund;

(e) collecting and maintaining the income of social impact members including maintenance of individual membership records;

(f) providing members with their individual financial records; and

(g) such other functions as may be allocated to it by the by-laws of the Sacco society.

(5) The Special Fund Trustee shall be remunerated for their service from the Special Fund.

Renumber the existing provision as subsection (1) and insert the following new subsection—

(2) In the implementation of this Act, county governments shall comply with the National Urban Development Policy.

Insert the following new section immediately after section 3—
3A. The Cabinet Secretary shall establish a Directorate of Urban Development and Management within the Ministry, whose principal functions shall include —

(a) formulating, implementing and reviewing the National Urban Development Policy;

(b) co-ordinating urban development at national level;

(c) convening forums for national urbanization dialogue;

(d) organising liaison for urbanisation non-state actors and the urban sector working group;

(e) developing and regularly reviewing criteria for the classification, governance and management of urban areas and cities;

(f) promoting innovative governance and open and inclusive urban areas and cities;

(g) establishing and maintaining a national urbanisation observatory;

(h) providing support and technical backstopping on urbanization to the counties;

(i) disseminating research and knowledge on urbanization, urban development and management;

(j) monitoring national urbanization trends and performance and advising national and county governments;

(k) monitoring urban disaster preparedness and urban safety and security and advising national and county governments;
(I) setting national priorities and
vision for urban development;

(m) building capacity in urban
governance, capacity of urban
authorities, project
management, resource
mobilization, monitoring and
evaluation;

(n) undertaking minimum intervention
projects in urban areas and cities to
ensure equity in urban
development and services
throughout the county; and

(o) performing such other functions as
the Cabinet Secretary may direct.

Insert the word “associations” immediately after the
word “Enterprises”.

Insert the word “associations” immediately after the
word “Enterprises”.

Insert the words “Associations and Umbrella
Organizations” immediately after the word “Enterprises”.

Insert the following subsection immediately after
subsection (2)—

(3) The Authority shall have its headquarters in
Nairobi and may establish such other offices in the
Counties as it deems appropriate.

Insert the following paragraphs immediately after
paragraph (k)—

(l) to undertake accreditation of business
development service providers; and

(m) to perform any other function necessary for the
implementation of this Act or other written law.
s. 48  Insert the words “County Governments” immediately after the word “agencies”.

s.49  Insert the words “County Governments” immediately after the word “agencies”.

s.51(4) Insert the following paragraph Immediately after paragraph (d)—

(da) such monies as may be appropriated by Parliament.

(5) Delete the words “treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund” and substitute therefor the expression “accordance with the Public Finance Management Act, 2012”.

s.53(1) Delete the expressions “Community-based organization” and “non-governmental organizations”.

(4) Delete and substitute therefor the following subsection—

(4) The Fund shall be managed in accordance with the Public Finance Management Act, 2012.

s.4  Delete.

s.5  Delete.

s.6  Delete.

s.14(1) Delete paragraphs (a) and (b).

(2) Delete paragraph (h);

Delete the word “Committee” wherever it appears in paragraphs (k), (l) and (q) and substitute therefor the expression “Cabinet Secretary”.

Insert the following new paragraphs immediately after paragraph (q)—
(r) approve project proposals submitted by contracting authorities;

(s) ensure that each project agreement is consistent with the provisions of this Act;

(t) examine and approve the feasibility study conducted by a contracting authority under this Act;

(u) ensure the efficient implementation of any project agreement entered into by contracting parties;

(v) require any information from any party to a project on any matter relating to a public private partnership.

s.17(1) Delete paragraph (j) and substitute therefor the following new paragraph—

(j) prepare projects in accordance with the guidelines and standards issued by the Cabinet Secretary under this Act.

s.27 Delete the words “where it considers” and substitute therefor the words “where he considers”.

s.28(3) Delete and substitute therefor the following new subsection—

(3) The Cabinet Secretary may impose a success fee on a transaction to be paid by a successful bidder in accordance with the tender documents.

s.30 Delete the word “Committee” and substitute therefor the expression “Cabinet Secretary”.

s.31(3) Delete the word “Committee” and substitute therefor the word “Unit”.

s.33(1) Delete the word “Committee and substitute therefor the word “Unit”.

s.37(1) Delete the word “upon approval by the Committee”

s.45(1) Delete and substitute therefor the following new subsection—

(1) A contracting authority may hold a competitive dialogue with each bidder to define the technical or financial aspect of the project in the manner prescribed under the Act.
s.48(4) Delete.

s.52(1) Delete the words "with the approval of the Committee".

s.54 Delete and substitute therefor the following new section—

Submission of memorandum to Cabinet for approval.

54. (1) The Unit shall submit the project report, the financial risk assessment report submitted to it under section 53 and its recommendations to the Cabinet Secretary for consideration and approval.

(2) For county projects, the project report and the financial risk assessment report shall be submitted to the contracting authority together with the recommendation of the unit for consideration and approval.

(3) After the approval under subsections (1) and (2) above the contracting authority shall execute the project agreement.

s.57 Delete.

s.58 Delete and substitute therefor the following new section—

Cancellation of tender.

58. (1) A contracting authority may at any time terminate procurement proceedings without entering into a contract.

(2) The bidders for a tender that is cancelled under this section shall not be entitled to compensation for the cancellation of the tender.

s.61(2) Delete paragraph (b) and substitute therefor the following new paragraph—

(b) submit the proposal to the Unit for consideration and approval.

Delete paragraph (c).
s.63(3) Delete and substitute therefor the following new subsection—

(3) The parties to a project agreement may agree to resolve disputes arising under the project agreement through arbitration or any other non-judicial means of dispute resolution agreed upon in the project agreement as specified under paragraph 18 of the Third Schedule.

s.64 Delete and substitute therefor the following new section—

Amendment and variation of project agreements.

64. (1) A party who intends to make material amendments to a project agreement in relation to the terms and conditions specified therein, the project or any waivers specified in the agreement shall —

(a) in the case of national projects, apply for and obtain the approval of the Cabinet Secretary;

(b) in the case of county level projects, obtain the concurrence of the Cabinet Secretary where the relevant project is supported by a letter of comfort or such other risk mitigation instruments from the national government.

(2) The Cabinet Secretary shall by written notice issue thresholds on what may be deemed material amendments.

s.65(5) Delete the word “Committee” and substitute therefor the word “Unit”.

s.71(1) Delete.

First Schedule. Delete.

The Crops Act, 2013 (No.16 of Insert the following new definitions in proper alphabetical sequence—
2013) "Board of Trustees" means the board trustees of the Fund;

"Fund" means the commodities fund established under section 9 of the Act.

s.8(n) Insert the following words at the beginning of the paragraph "in consultation with the Ministry responsible for industrialization".

s.9 Insert the following new subsections immediately after subsection (3)—

"(4) The Board of Trustees shall comprise of—

(a) a non-executive chairperson;

(b) the Principal Secretary in the Ministry responsible for matters relating to agriculture or a designated representative;

(c) the Principal Secretary in the Ministry responsible for matters relating to finance or a designated representative;

(d) the Principal Secretary in the Ministry responsible for matters relating to Cooperatives or a designated representative;

(e) three persons appointed by virtue of their knowledge and experience in matters relating to human resource management, accounting and auditing respectively;

(f) one person appointed by virtue of knowledge and experience in matters relating to agriculture, co-operative or law;

(g) the Director-General of the Authority or a designated representative; and

(h) the Managing Trustee appointed under section 9A who shall be an ex-officio member and Secretary of the Board of Trustees.
(5) The members of the Board of Trustees appointed under paragraph (e) and (f) shall serve for a term of three years and shall be eligible for reappointment for one further term.

New

Insert the following new section immediately after section 9—

9A. (1) The Board of Trustee shall appoint a Managing Trustee of the Fund through a competitive process, who shall serve on terms and conditions to be specified in the instrument of appointment.

(2) The Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Cabinet Secretary and subject to the law relating to trustees.

s.10(1)

Insert the expression “, processors, and other value chain actors” immediately after the word “farmers” appearing in the opening statement.

Insert the following new paragraph immediately after paragraph (c)—

(ca) other value chain activities including processing, transportation, storage and warehousing.

(2) Delete the word “Authority” and substitute therefor the expression “Cabinet Secretary”.

s.13(1)(j)

Insert the following words “in consultation with the Ministry responsible for industrialization” immediately after the word “addition”.

s.18(1)

Insert the following expression “and other applicable Acts including Special Economic Zones Act, 2015; Export Processing Zones Act, 1990 and Micro and Small Enterprises Act, 2012” immediately after the word “Act”.
Insert the words "other than an institution established under any other law and which is not expressly subjected to this Act" immediately after the word "institution" appearing in the definition of the expression "public institution".

Insert the following new paragraph immediately after paragraph (b)—

(ba) the Principal Secretary in the National Treasury.

Insert the words "unless otherwise provided by any other statute" immediately before the word "admission".

Insert the following new subsection immediately after subsection (3)—

"(4) For the avoidance of doubt, this Act shall not apply to institutions established under statutes other than the Education Act (repealed)."

Insert the following new definition in proper alphabetical sequence—

"local contractor" means a person or a firm registered in Kenya under the Companies Act or any other written law and whose operation is based in Kenya.

Delete the definition of the term "procurement profession" and substitute therefor the following new definition—

"procurement professional' means a person who has professional qualifications in procurement or supply chain management from a recognized institution and is a member of the Kenya Institute of Supplies Management or any other supply chain professional body.
s.7(2) Insert the following new paragraphs immediately after paragraph (l)—

(la) to develop, promote and support the training and capacity development for procurement and supply chain management services cadre at the national and county level; and

(lb) develop and manage the state portal on procurement and asset disposal and ensure that it is available and easily accessible.

s.9(1) Delete paragraph (k).
Insert the following new paragraph immediately after paragraph (r)—

(s) to develop, promote and support the training and capacity development of persons involved in procurement and asset disposal.

s.26(6) Delete the word “draft” and substitute therefor the word “annual”.

s.39 Delete the word “Board” and substitute therefor the words “Director General”.

s.40(2) Delete the word “Board” and substitute therefor the words “Director General”.

s.41(1)(j) Delete the word “Board” and substitute therefor the words “Director General”.

s.43 Insert the following new subsections immediately after subsection (8)—

(9) When conducting Investigations, Inspections, Assessments and Reviews relating to contracts, procurement and asset disposal proceedings, any person authorized by the Authority may enter any premises of a procuring entity, at a reasonable time and inspect the premises to make any inquiries that may be necessary for the collection of information.

(10) Where an authorized person is refused entry or is prevented from entering into any premises, a magistrate may, on application by the Authority, issue a warrant authorizing the Police to enter the premises, using such force as may be reasonably necessary and to conduct the search and obtain the required information.
s.44 Insert the following new subsection immediately after subsection (4)—

(5) Where a public entity lacks capacity to comply with this Act an accounting officer shall seek assistance from the National Treasury.

s.46(4)(c) Insert the following words at the end of the paragraph “or an officer from the procurement function appointed in writing by the Head of procurement function”.

(6) Delete.

s.48(2) Delete the words “procuring unit” and substitute therefor the words “head of procurement function”.

s.51(2)(b) Delete the words “procurement and disposal unit” and substitute therefor the words “procurement function”.

s.53 Insert the following new subsections immediately after subsection (11)—

(12) Upon submission of the procurement plans to the national treasury pursuant to section 44(2) (c), the accounting officer of a procuring entity shall publish and publicize its approved procurement plan as invitation to treat on its website.

(13) On receipt of the procurement plans submitted by the procuring entities, the National Treasury shall publish and publicize the procurement plans as invitation to treat on the state tender portal.

s.54 Insert the following new subsection immediately after subsection (4)—

(5) The head of procurement function shall carry out market survey(s) to inform the placing of orders or decision making on a procurement by the relevant awarding Authority.

s.67(4) Delete the expression “section 67 (2) (d) (iii)” and substitute therefor the expression “Section 68(2) (d) (iii)”.

s.69 Delete the marginal note and substitute therefor the following words "Procurement Approvals and delegation of responsibility".
s.70 Delete the expression "section 60" and substitute therefor the expression "section 63".

s.71(3) Delete the word "tenderer" and substitute therefor with the words "procuring entity".

s.80(1) Delete the expression "under section 82(3)".

(6) Delete the word "thirty" and substitute therefor the words "seven".

Insert the following subsection immediately after subsection (6)—

(7) Where a tender is complex or has attracted a high number of procurement entities, the accounting officer may extend the tender evaluation period for a further period of seven days.

s.89(b) Delete the expression "section 118(2)" and substitute therefor the expression "section 118(1)".

s.92 Insert the following paragraph immediately after paragraph (1)—

(la) specially permitted procurement procedure.

Renumber the existing provision as subsection (1) and insert the following subsection immediately after subsection (1)—

(2) The procedure for Competitive Negotiations set out in sections 131, 132 and 133 of the Act shall, apply mutatis mutandis to procurements of goods, works and non-consultancy services.

s.94(4) Delete the words "fourteen days" and substitute therefor the words "seven days".

s.98(1) Delete the word "and" appearing immediately after the word "documents".

s.114(6) Delete the words "A procurement management unit" and substitute therefor the words "A procurement function".

s.117 Delete the expression "section 74" and substitute therefor the expression "section 73".

Delete the marginal note and substitute therefor the following marginal note—
"Terms of reference and initiation of procurement."

s.119(1) Delete the word “may” and substitute therefor the word “shall”.

s.121 Delete the words “accounting officer of a procuring entity” appearing in subsection (1) and substitute therefor the words “evaluation committee”.

Insert the following subsection immediately after subsection (4)—

(5) Notwithstanding provisions of subsection (3) above, where a repeat process fails to yield the requisite numbers of qualified candidates, the procuring shall proceed with the subject procurement and make a report to the Authority.

s.124(14) Delete.

(15) Delete and substitute therefor the following new subsection—

(15) Where alternative selection methods are used a report shall be prepared and submitted to the Authority within fourteen days.

Insert the following subsection immediately after subsection (15)—

(16) The Authority shall issue written directions and guidelines governing the reporting requirements for use of alternative selection methods by the accounting officers of procuring entities.

s. 126(3) Delete the expression “twenty-one” and substitute therefor the word “seven”.

Insert the following proviso immediately after subsection(3)—

“Provided that where the subject of procurement is complex or attracts a high number of tenderers, the accounting officer may extend the evaluation period for a further period not exceeding seven days.”

s.135(3) Delete the words “fourteen days” and substitute therefor the words “seven days”.

(4) Delete.
s.136(1)(b) Delete the expression “section 61” and substitute therefor the expression “section 64”.

s.138(5) Insert the expression “through classified procurement methods and procedures under Part VIII” at the end.

s.139(4) Delete the words “after twelve months from the date of signing the contract and shall only be considered”.

s.167(1) Delete the word “fourteen” and substitute therefor the word “seven”.

(4)(b) Delete the expression “section 62” and substitute therefor the expression “section 63”.

Insert the following new subsection immediately after subsection (4)—

(5) Provisions under subsection (2) of this section shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups.

s.168 Insert the words “and the Attorney-General” immediately after the expression “procuring entity”.

s.169 Renumber the existing provision as subsection (1) and insert the following subsection immediately after the renumbered subsection (1)—

(2) Notwithstanding provisions of subsection (1), filing fees for review by candidates under reserved procurements for women, youth, persons with disabilities and other disadvantaged groups may be waived by the secretary or where required fees shall be as prescribed.

s.172 Delete the full stop and insert the words “and be debarred by the Authority”.

s.173(c) Delete.

s.176(1)(e) Delete the expression “section 78” and substitute therefor the expression “section 76(6)”.
Delete the expression “section 66” and substitute therefor the expression “section 67”.

Delete the expression “section 60” and substitute therefor the expression “section 54”.

Delete.

Delete.

Delete the expression “section 66” and substitute therefor the expression “section 67”.

Delete the expression “section 67” and substitute therefor the expression “section 68(2)”.

Delete the expression “section 51(2)” and substitute therefor the expression “section 68(2)”.

Delete the expression “section 67” and substitute therefor the expression “section 138”.

Delete the words “youth” from the definition of word “Authority”.

Delete paragraph (a) and substitute therefor the following new paragraph—

(a) the national and county governments.

Delete paragraph (m) and substitute therefor the following new paragraph—

(m) co-ordinate the implementation of policies and programmes on employment.

Insert the following new section immediately after section 8—

8A. In addition to the functions specified under section 8, the Authority shall—
(a) advise the Cabinet Secretary on all matters concerning labour migration;

(b) co-ordinate the various labour migration activities to ensure protection of Kenyan migrants workers and promote their welfare;

(c) register and maintain an integrated data of all Kenyan migrant workers;

(d) approve pre-departure training programmes and ensure that Kenyan migrants undergo the relevant pre-departure preparation before leaving to work outside Kenya;

(e) undertake research and collect and disseminate information on labour migration;

(f) ensure that Kenyan migrant workers who are in distress are assisted and returned to Kenya when necessary;

(g) develop and implement programmes to ensure that Kenyan migrant workers returning to Kenya are reintegrated in society;

(h) ensure the proper administration and management of the migrant workers' welfare fund established under section 41;

(i) provide legal and other necessary assistance for Kenyan migrant workers who are in distress;

(j) formulate programmes to enable Kenyan migrant workers enter into technical jobs, better wage employment, entrepreneurial development and investment of savings; and

(k) ensure the establishment of safe houses for Kenyan migrant workers in distress in destination countries.

s.17(2) Insert the expression “Master's” in paragraph (a) immediately before the word “degree”.

Delete the words “five” and “two” appearing in paragraph (c) and substitute therefor the words “ten” and “five” respectively.

Delete paragraph (d).

Delete and substitute therefor the following new sub-section—
(1) Whenever a vacancy arises in a public or State office at the national government or county government, the concerned State office, public office or national government or county government shall convey details of the vacancy to the Authority.

s.28(1)

s.30(1) Delete the word “youth” and substitute therefor the word “persons”.

(3) Delete the word “youth” and substitute therefor the word “persons”.

(3) Insert the words “county entity” immediately after the words “State entity”.

s.33(1) Delete the expression “private companies” and substitute therefor the expression “prospective employers”.

(3) Delete the word “youth are not denied” and substitute therefor the words “no person is denied”.

s.37(1) Delete the words “the State shall through the Authority” and substitute therefor the words “The Authority shall”.

(2) Delete the words “State” and substitute therefor the word “the Authority”.

s.42(2) Delete the word “youth” appearing in paragraph (a) and substitute therefor the word “persons”.

Delete the word “youth” and substitute therefor the word “persons”.

The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

s.2 Delete the definitions to the expressions “artisanal fishing vessel”, “fishing”, “fish product”, “industrial fishing vessels” and “semi-industrial fishing vessel” and substitute therefor the following new definitions in proper alphabetical sequence—

“artisanal fishing” means small scale traditional fishing carried out for subsistence purposes in which the owner is directly involved in the day-to-day running of the enterprise and relatively small amounts of capital are used;

“fishing” means attempting, attracting, searching for, locating, catching, taking or harvesting or any activity which can reasonably be expected to result in the attempting, attracting,
searching for, locating, catching, taking or harvesting of fish, and includes the use of an aircraft for any of the aforementioned activities, except for flights in emergencies involving the health or safety of a crew member or the safety of the vessel, but does not include aquaculture or the transportation of fish; and

“fish product” means any product or part thereof (including oil) obtained from nature by fish processing, or as products secreted by fish and intended for use as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;

s.58(2) Insert the expression “standing committee” immediately before the expression “technical committee”.

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

(4) The Cabinet Secretary may, for purposes of subsection (2), make regulations with regard to the conduct of the affairs of the standing committee and the technical committee.

s.81(3) Delete and substitute therefor the following new subsection—

(3) The register established under subsection (1) shall contain information relating to fishing vessels licensed to engage in fishing or fishing-related activities in Kenya fishery waters and to Kenya fishing vessels authorised to operate in areas beyond national jurisdiction.

s.84(1) Delete the expression “92(3)” and substitute therefor the expression “93(3)”.

Insert the following new paragraph immediately after paragraph (e)—

(f) ornamental fishing.

(2) Delete paragraph (b).

(4) Delete paragraph (g).
(5) Insert the following new paragraph immediately after paragraph (e)—

(f) conducting fishing operations for educational purposes;

(g) the supply of food in case of emergency.

s.85(1) Delete and substitute therefor the following new subsection—

(1) A person engaged in artisanal fishing shall be exempted from the requirement for a licence but shall require to be registered.

s.86(1) Place a full-stop immediately after the word “discharged” and delete the rest of the subsection.

(3) Insert the words “or an authorised officer” immediately after the expression “an inspector”.

s.88(1) Delete the words “Kenyan fishery waters” appearing in paragraph (c).

Insert the words “or any relevant international conservation and management measures” immediately after the expression “international agreement” appearing in paragraph (g).

(2) Insert the following new paragraph immediately after paragraph (b)—

(c) no fishing licence shall be issued to a fishing vessel that has changed its flag within the same fishing season; or

(d) a fishing vessel which is connected with any offence under this Act and which subsequently changes its flag but retains the ownership shall not be issued with a licence as a fishing vessel.

s.89(1) Insert the words “in the case of fishing vessels” immediately before the words “be accompanied” appearing in paragraph (d).

s.91(2) Insert the following new subsection immediately after subsection (2)—

(2A) A licensee shall not use forced labour and shall ensure that the fishing vessel is sufficiently
and efficiently manned and under the constant supervision of a competent skipper.

Insert the following new subsection immediately after subsection (4)—

(5) The Cabinet Secretary may make regulations to prescribe minimum standards for crew working on ships.

s.98(1) Delete paragraph (h) and substitute therefor the following new paragraph—

(h) ensure that such percentage of crew on the fishing vessel, as the Cabinet Secretary may from time to time prescribe, are citizens of Kenya.

s.112(1) Insert the following expression “Special Economic Zones Act 2015 and Export Processing Zones Act 1990” immediately after the word “Act” appearing in the opening statement.

(a) Insert the following words “and Ministry responsible for industrialization” immediately after the expression “Director-General”.

s.114(2) Insert the following new paragraph immediately after paragraph (q)—

(r) the origin of fish or fish consignments.

s.140(1) Delete subparagraph (a)(i) and substitute therefor the following new subparagraph—

(i) any Kenyan fishing vessel within or outside the Kenyan fishery waters.

s.201(1) Delete paragraph (g).

s.202(2) Delete the expression “t (1) (a) and (f) and substitute therefor the expression (i) (a), (f) and (h)”.

s.206(1) Delete the expression “Fish Marketing Board” and substitute the expression “Fish Marketing Authority”.

s.207(1) Delete the introductory portion and substitute therefor the following words—

“The funds of the Authority shall consist of —”
MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Miscellaneous Amendments) Bill, 2018 is in keeping with the practice of making various amendments which do not merit the publication of separate Bills and consolidating them into one Bill.

The Bill contains proposed amendments to the following statutes—

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

The Bill proposes to amend the Betting, Lotteries and Gaming Act to enhance the penalties provided in sections 5(4), 8(3), 10(2), 11(4), 59(2) and 61.

The Bill also seeks to amend the Act to reduce the amount of betting and lottery tax payable by operators and have part of it being paid out winnings.

The Dairy Industry Act (Cap.336)

The Bill proposes to amend the Dairy Industry Act to enlarge the definition of milk to include goat and camel milk. It also seeks to enhance penalties under the Act as well as allow for regulations on the standards, manner of installation and operation of milk dispensers.

The Co-operative Societies Act, (Cap. 490)

The Bill proposes to amend The Co-operative Societies Act, (Cap. 490) to create a new form of members of co-operative societies by creating a new class of members of co-operative societies targeted towards social impact investments. The Bill seeks to safeguard member rights in the democratic choice in co-operative societies by giving the Cabinet Secretary supervisory powers to prevent oppression of members by creation of such new classes.

The Bill also seeks to limit the voting powers of social impact members be limited to specific resolutions; maintenance and operation of the proposed Special Fund, investment committee, remuneration of the special fund trustee and similar affairs.

The National Hospital Insurance Fund Act 1998 (No. 4 of 1998)

The Bill seeks to amend the National Hospital Insurance Fund Act, 1995 to enable the Fund to receive contributions from the National Government, the County Governments and employers for the administration of employee benefits; contributions from the post-retirement medical funds or employers in respect to retired employees; donations, gifts or grants; to receive an employer’s contribution, matching the employee’s contribution and to receive contributions from the National
and County Governments of Kenya for persons certified by the board
to be unable to pay the contributions from funds voted by parliament for
that purpose.

The Bill seeks to provide for prudent investment of the Fund and to
provide for administration expenditures in respect of any financial year not
exceeding fifteen per cent of the total annual collected Funds.

**The Statistics Act, 2016 (No. 4 of 2006)**

The Bill proposes to amend the Statistics Act, 2006 to streamline the
membership of the Board of Directors of the Bureau and to clarify the
functions of the Board. It also seeks to include the office of the
Corporation Secretary.

The Bill also amends the First Schedule to clarify the role of the
national government and the county government. It also amends the Act to
include a new Schedule which sets out the fundamental principles relating
to statistics.

**The Energy Act, 2006 (No. 12 of 2006)**

The Bill proposes to amend section 67 of the Energy Act, 2006, to give an additional function to the Authority which is to collaborate with
the county governments and other agencies in facilitating the supply of
electricity in order to promote the development of appropriate local
capacity in manufacturing.

**The Sacco Societies Act (No. 14 of 2008)**

The Bill proposes to amend the Sacco Societies Act, (No. 14 of 2008)
to create an exception to the restricted investments that a Sacco society is
permitted to make. The Bill seeks to provide for the establishment of a
Special Fund by Sacco societies, the establishment of an Investment
Committee to monitor and supervise the Special Fund and the appointment
of a Special Fund Trustee who shall be responsible receiving and investing
the Special Fund.

**The Urban Areas and Cities Act, 2011 (No. 13 of 2011)**

The Bill proposes to amend the Urban Areas and Cities Act, 2011, to
introduce a new subsection to section 3 to require counties to comply with
the National Urban Development Policy.

It also seeks to introduce a new provision to empower the Cabinet
Secretary establish a Directorate of Urban Planning and Management
within the Ministry and to set out the functions of that Directorate.
The Micro and Small Enterprises Act 2012 (No. 55 of 2012)

The Bill seeks to amend the MSE Act to create a conducive environment for investors.

The Public Private Partnership Act, 2013 (No. 15 of 2013)

The Bill proposes to amend the Public Private Partnership Act, 2013, to remove the provisions relating to the Committee and confer functions on the Cabinet Secretary. It also seeks to expand the functions of the Unit. It also seeks to amend section 28 to empower the Cabinet Secretary to impose a success fee to be paid by a successful bidder on a transaction.

The Bill also proposes to amend section 45 to remove the requirement of consultation with the public private partnerships Unit and approval of the Committee where a contracting authority chooses to conduct a competitive dialogue with bidders. It also seeks to amend section 54 and sets out the procedures of submission of memorandum to Cabinet Secretary for approval. It also proposes section 57 which refers to presentation of proposals to the National Assembly for approval.

It also proposes to amend section 64 to provide for the amendment of both national and county level projects.

The Crops Act, 2013 (No. 16 of 2013)

The Bill seeks to amend the Crops Act, 2013 to provide for the benefit of value addition to agricultural produce in relation to export.

The Kenya Medical Supplies Authority Act, 2013 (No. 20 of 2013)

The Bill seeks to amend the Kenya Medical Supplies Authority Act, 2013 to provide for the mode of appointment of the chairperson of the Kenya Medical Supplies Authority, and to provide for the involvement of County Governments in the Board of the Authority. The Bill also seeks to provide for the appointment of the Corporation Secretary for the Authority in accordance with the Mwongozo guidelines for the management of state corporations.

The Technical and Vocational Education and Training Act, 2013 (No. 29 of 2013)

The Bill proposes to amend the Technical and Vocational Education Act, 2013, to include the Principal Secretary to the National Treasury as a member of the Certification Council.

The Public Procurement and Asset Disposal Act, 2015 (No.33 of 2015)

The Bill seeks to amend the Public Procurement and Asset Disposal Act, 2015 to make provision in relation to the Board and the process of procurement by public entities.
The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

The Bill proposes to amend the Fisheries Management and Development Act, 2016, to harmonize various definitions in the Act.

It also seeks to introduce a new provision which empower the Cabinet Secretary to make Regulations with regard to the conduct of the affairs of the standing committee and the technical committee and to prescribe the minimum standards for crew working on fishing vessels.

It also seeks to introduce new provisions to streamline the issue of licensing for fisheries activities.

The enactment of this Bill may occasion additional expenditure of public funds to be provided for in the estimates.

This Bill is a Bill concerning county governments within the meaning of Article 110 of the Constitution.

Dated the 29th March, 2018.

ADEN DUALE,
Leader of Majority Party.
Section 2 of Cap 131 which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

“authorized race meeting” means a race meeting in respect of which a permit authorizing bookmaking to take place thereat has been issued under section 23;

“betting premises” means premises to which the public has or may have access and which are kept or used (whether on one occasion or more than one) for the purpose of—

(a) bets being made therein between persons resorting to the premises and the owner, occupier or keeper thereof, or any person using the premises, or any person procured or employed by or acting for or on behalf of the owner, occupier, keeper or person using the premises, or of any person having the care or management or in any manner conducting the business thereof; or

(b) any money or valuable thing being received by or on behalf of the owner, occupier, keeper or person aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give, or for securing the paying or giving by some other person of, any money or valuable thing on any horse race, or other race, fight, game, sport, lottery or exercise, or any other event or contingency;

“betting transaction” includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;

“bookmaker” means a person who, whether on his own account or as servant or agent to another person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets, or who in any manner holds himself out, or permits himself to be held out in any manner, as a person who receives or negotiates bets, so however that a person shall not be deemed to be a bookmaker by reason only of the fact—

(a) that he carries on, or is employed in operating, a totalisator in respect of which a licence has been issued under section 18; or
(b) that he carries on, or is employed in a business that is wholly concerned with, a pool betting scheme in respect of which a licence has been issued under section 22;

“Collector” means the Commissioner-General appointed under the Kenya Revenue Authority Act;

“coupon”, in relation to a pool betting scheme or proposed pool betting scheme, includes a document connected with, or designed to assist in the making of, a bet by way of pool betting;

“game of chance” includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include an athletic game or sport;

“gaming” means the playing of a game of chance for winnings in money or money’s worth;

“gaming machine” means a machine for playing a game of chance, being a game which requires no action by a player other than the actuation or manipulation of the machine;

“gaming premises” means premises which are kept or used (whether on one occasion or more than one) for gaming, and to which the public has or may have access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;

“gaming revenue” means gross turnover less the amount paid out to customers as winnings;

“horse race” includes a pony race;

“instruments of gaming” means cards, dice, counters, coins, tickets, gaming tables, boards, boxes, or other things devised, or birds and animals used, for the purpose of gaming;

“licensed betting premises” means premises duly licensed in terms of this Act as premises wherein bets may be made and settled;

“licensed gaming premises” means premises licensed under this Act as premises to which the public may resort for the purpose of gaming;
“licensee” means a person issued with a licence under any of sections 16, 18, 22 and 46;

“lottery” includes a sweepstake, a raffle and any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the withdrawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever;

“money” includes a cheque, bank note, postal order or money order;

“newspaper” includes a journal, magazine or other periodical publication;

“permit-holder” means the holder of a permit issued under any sections 23, 36, 39, 54 and 58;

“pool betting” means the making of bets (other than bets made by means of totalisator), whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

“pool betting scheme” means a scheme involving the receiving or negotiating of bets made by way of pool betting;

“premises” includes any place, and in sections 14, 35, 45, 50, 53 and 58 also includes any vessel;

“racecourse” means a place used for the purpose of holding a race meeting;

“race day” means a day on which a race meeting is held;

“race meeting” means a gathering of the public or of the members of an association of persons to watch horse races or other races;

“tax” means any charges, fees, levies or impositions imposed under this Act;

“the Board” means the Betting Control and Licensing Board established by section 3;
“the Permanent Secretary” means the Permanent Secretary of the Ministry for the time being responsible for Betting, Lotteries and Gaming;

“ticket”, in relation to any lottery or proposed lottery, includes any document evidencing the claim of a person to participate in the chances of the lottery;

“to bet” means to wager or stake any money or valuable thing by or on behalf of any person or, expressly or impliedly to undertake, promise or agree to wager or stake by or on behalf of any person, any money or valuable thing on a horse race, or other race, fight, game, sport, lottery or exercise or any other event or contingency;

“totalisator” means the instrument, machine or contrivance commonly known as a totalisator, or any other instrument, machine or contrivance of a similar nature, or a scheme for enabling any number of persons to make bets on any event or contingency whatsoever with one another or principles of a similar nature;

“turf club” means a club or association or other body of persons (whether incorporated or unincorporated) established for the purpose of promoting, conducting and controlling the sport of horse racing;

“unlawful game” means a game of chance the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet;

“winnings” includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

Section 3 of Cap 131 which it is proposed to amend—

3. (1) There is hereby established a board, to be known as the Betting Control and Licensing Board, which shall consist of—

(a) a chairman, not being a public officer, to be appointed by the Minister by notice in the Gazette;
(b) the Permanent Secretary to the Treasury or a person deputed by him in writing in that behalf;

(c) the Permanent Secretary of the Ministry for the time being responsible for the Police or a person deputed by him in writing in that behalf;

(d) the Permanent Secretary of the Ministry for the time being responsible for Betting, Lotteries and Gaming or a person deputed by him in writing in that behalf; and

(e) such other persons, not exceeding five in number, as the Minister may, by notice in the Gazette, appoint.

(2) Before the Minister makes an appointment under this section, he may require the person to be so appointed to declare whether he has any, and if so what, financial interest in any betting undertaking operating in Kenya.

(2A) The members referred to in paragraphs (a) and (e) of subsection (1) shall hold office for a period of three years from the date of their appointment, but shall be eligible for re-appointment.

(3) In the event of the chairman being absent from any meeting of the Board, the members present shall choose one of their number to act as chairman for that meeting.

(4) At all meetings of the Board, the chairman or the person chosen to act as chairman under subsection (3) together with three other members of the Board shall form a quorum.

(5) Meetings of the Board shall be held at least once in every three months and at such other times, on such occasions and at such places as the chairman may determine.

(6) The chairman or the person chosen to act as chairman under subsection (3) shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.

(7) The Board may co-opt to serve on it for such length of time as it thinks fit any person or persons whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.
(8) The chairman of the Board may, with the approval of the Minister, appoint such persons to act as officers and servants of the Board as he considers requisite to enable it to discharge its duties under this Act.

(9) The chairman, members, officers and servants appointed under this section shall be paid out of moneys provided for that purpose by Parliament such salaries, remuneration and allowances, if any, as the Minister may determine.

(10) All permits and licences issued under this Act and all communications from the Board shall be under the hand of the chairman or of some person duly authorized by the chairman, notification of that authorization being published in the Gazette under the hand of the chairman.

(11) The chairman shall submit to the Minister for publication an annual report of the proceedings of the Board containing particulars with respect to such matters as the Minister may direct.

(12) No member of the Board, nor any officer or servant thereof, shall be personally liable for any act or default done or omitted to be done in good faith in the course of his duties under this Act.

Section 5 of Cap 131 which it is proposed to amend—

5. (1) A person who desires to obtain, renew or vary a licence or permit under this Act shall make application to the Board in the form and manner prescribed.

(2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary in order to enable it to examine the application.

(3) After making investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may either grant, renew or vary a licence or permit or refuse a licence or permit or renewal or variation thereof without reason given:

Provided that—

(i) no licence or permit shall be issued under this Act unless and until the Board has satisfied itself
that the applicant is a fit and proper person to
hold the licence or permit and that the premises,
if any, in respect of which the application is made
are suitable for the purpose;

(ii) no licence shall be issued under this Act unless
the Board has sent a copy of the application for
the licence to the local authority within whose
area of jurisdiction the applicant proposes to
conduct his business and has given the local
authority reasonable opportunity to object to, or
make recommendations with respect to, the
application.

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

Section 6 of Cap 131 which it is proposed to amend—

6. (1) Whenever a licence is issued under this Act the
Board shall impose as a condition thereof a requirement
that the applicant shall furnish the Board with security by
means of a deposit, or such other security as the Board may
approve, of a sum not exceeding forty thousand shillings
and that security shall be refunded or cancelled on the
expiration or cancellation of the licence in respect of which
it has been deposited or given unless it is forfeited under
section 64.

(2) In the case of a partnership, only one security in
respect of the partnership shall be required, notwithstanding
that licences under any of sections 16, 18, 22 and 46 have
been issued in respect of the partnership.

(3) In determining the amount of security the Board
shall take into account the known business of the applicant
and the amount, if any, by which that business may
reasonably be expected to increase in the ensuing year.

(4) The Board may at any time vary the amount of any
security given in pursuance of this section if it is satisfied
that, having regard to the known scale of business of the
licensee concerned, the variation is reasonable.
Section 8 of Cap 131 which it is proposed to amend—

8. (1) Every licence or permit issued by the Board under this Act shall, during the period of its validity, be prominently displayed by the licensee or permit-holder at his principal place of business, if any, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the licensee or permit-holder.

(2) On notification to a person that his licence or permit has been cancelled or suspended, that person shall forthwith surrender his licence or permit, as the case may be, to the Board.

(3) A person who without reasonable cause or excuse fails to comply with this section, or who displays a licence or permit which is not currently valid, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 10 of Cap 131 which it is proposed to amend—

10. (1) A licensee shall enter or cause to be entered regularly in a book kept for the purpose all such particulars as may be prescribed.

(2) A licensee who contravenes subsection (1), or who knowingly or recklessly keeps any book, record or account required to be kept under this section which is false in any material particular, or who makes or causes to be made in any such book an entry which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 11 of Cap 131 which it is proposed to amend—

11. (1) The Board may at any time, and shall, at least once in every twelve months, require a licensee to submit to the Board a properly audited statement of accounts.

(2) The Board may require a permit-holder, other than a holder of a permit issued under section 23, section 54 or section 58, to render accounts to the Board in such form and within such period as it may specify.
(3) The Board may require accounts submitted to it under this section to be the subject of audit by an accountant, whose appointment as auditor shall be notified by the licensee or permit-holder, as the case may be, to the Board and approved by it.

(4) A person who refuses or fails to submit a statement of accounts as and when required by the Board or who knowingly submits a false or misleading statement shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 29A of Cap 131 which it is proposed to amend—

29A. (1) There shall be a tax to be known as betting tax chargeable at the rate of thirty-five per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by the licensed bookmaker on the 20th day of the month following the month of collection.

Section 36 of Cap 131 which it is proposed to amend—

36. (1) The Board may issue a permit authorizing the promotion and conduct of a lottery (not being a lottery promoted and conducted under section 40, section 41 or section 42)—

(a) which is intended to raise funds for social service, public welfare, relief of distress or patriotic purposes or to provide recreational or sporting facilities; and

(b) at least twenty-five per centum of the gross proceeds of which is to be devoted to the object for which the lottery is promoted:

Provided that the Board may require as a condition that a specified proportion of greater than twenty-five per centum of the proceeds be devoted to the object for which the lottery is promoted, but in no case shall the Board require a proportion greater than forty-five per centum of the gross proceeds.
(2) Where in the case of a lottery authorized under this section less than twenty-five per centum, or less than the proportion provided by the Board under the proviso to subsection (1), of the gross proceeds of the lottery is devoted to the object for which the lottery is promoted or any of the proceeds are devoted to a purpose, other than expenses and prizes, which is not such an object, each promoter of the lottery shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 44A of Cap 131 which it is proposed to amend—

44A. (1) There shall be a tax to be known as lottery tax chargeable at the rate of thirty-five per cent of the lottery turnover.

(2) The tax shall be paid to the Collector by a person authorized to promote the lottery on the 20th day of the month following the month of collection.

Section 53 of Cap 131 which it is proposed to amend—

53. (1) A person who—

(a) uses or permits the use of an unauthorized gaming machine; or

(b) knowingly allows premises to be used for the purpose of gaming by means of an unauthorized gaming machine; or

(c) knowing or having reasonable cause to suspect that premises would be used for gaming by means of an unauthorized gaming machine—

(i) caused or allowed the machine to be placed on the premises; or

(ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connection with the machine was committed, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.
(2) In this section, "unauthorized gaming machine" means a gaming machine in respect of which a permit has not been issued under section 54.

Section 54 of Cap 131 which it is proposed to amend—

54. (1) The Board may, subject to any regulations made under this Act, issue a permit authorizing the use of a gaming machine on premises approved by it.

(2) A permit issued under this section shall be subject to such conditions as the Board may impose and to the following conditions—

(a) not more than two gaming machines are made available for play in any one building or, where different parts of a building are occupied by two or more different persons, in the part or parts of the building occupied by any one of those persons; and

(b) the stake hazarded in order to play the game once does not exceed one shilling; and

(c) all stakes hazarded are applied either in the payment of winnings to a player of the game or for purposes other than private gain; and

(d) the premises on which the gaming machine is used are not wholly or mainly used by persons under the age of eighteen years.

(3) A person who contravenes any conditions provided for in subsection (2) or imposed by the Board shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(4) In this section—

(a) in construing subsection (2)(c), stakes hazarded shall not be held to be applied for purposes of private gain by reason only that their application for purposes other than private gain resulted in benefit to any person as an individual:
Provided that, where a payment falls to be made by way of hiring, maintenance or other charge in respect of a gaming machine and the amount of that charge falls to be determined wholly or partly by reference to the extent to which that gaming machine is used for the purposes of gaming, then that payment shall be held to be an application of the stakes hazarded for purposes of private gain;

(b) "building" includes the curtilage of the building.

Section 55 of Cap 131 which it is proposed to amend—

55. (1) Subject to this Act, a person who takes part in gaming in a street or other place to which, whether on payment or otherwise, the public have or may have access, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(2) A police officer may arrest without warrant anyone whom he finds in a street or other place referred to in subsection (1) and whom he suspects, with reasonable cause, to be committing an offence under this section.

(3) In this section, "street" has the meaning assigned to it in section 29(3).

Section 55A of Cap 131 which it is proposed to amend—

55A. (1) There shall be a tax to be known as gaming tax chargeable at the rate of thirty-five per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by a person carrying on a gaming business on the 20th day of the month following the month of collection.

Section 59 of Cap 131 which it is proposed to amend—

59. (1) No person shall conduct in Kenya, in or through any newspaper or broadcasting, or in connection with a trade or business or the sale of any article to the public—
(a) a competition in which prizes are offered for forecasts of the result either of a future event, or of a past event the result of which is not yet ascertained or not yet generally known;

(b) any other competition success in which does not depend to a substantial degree upon the exercise of skill:

Provided that nothing in this subsection with respect to the conducting of competitions in connection with a trade or business shall apply in relation to a pool betting scheme licensed under section 22.

(2) A person who contravenes this section shall, without prejudice to his liability, if any, to be proceeded against under any other provision of this Act relating to betting and lotteries, be guilty of an offence and liable to fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) In this section, “broadcasting” means radio communication, within the meaning of section 2 of the Kenya Posts and Telecommunications Corporation Act (Cap. 411), for reception by members of the public.

Section 59B of Cap 131 which it is proposed to amend—

59B. (1) There shall be a tax to be known as prize competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of thirty-five per cent of the total gross turnover.

(2) The tax shall be paid to the Collector by the licensed person on the 20th day of the month following the month of collection.

Section 59B of Cap 131 which it is proposed to amend—

61. A person who, by any fraud or unlawful device or ill-practice in playing at or with an instrument of gaming, or in taking a part in the stakes or wagers, or in betting on the sides or hands of those that are playing, or in wagering on the event of a game, sport, pastime or exercise, wins from another person for himself, or for or on behalf of
another person, a sum of money or valuable thing shall be
guilty of an offence and liable to a fine not exceeding five
thousand shillings or to imprisonment for a term not
exceeding six months or to both.

Section 3 of Cap 336 which it is proposed to amend—

3. In this Act, except where the context otherwise
requires—

“Board” means the Kenya Dairy Board established by
section 4;

“butterfat” means the natural and complete fat which
is present in milk;

“Central Agricultural Board” means the Board
established by section 35 of the Agriculture Act (Cap. 318);

“consumer” means a person who buys dairy produce
for his own use and not for resale;

“dairy produce” means milk, cream, butter, ghee,
cheese and any other product or by-product of milk;

“distributor” means a person who buys dairy produce
for the purpose of resale;

“ghee” means pure clarified butterfat containing no
preservative or colouring matter and no fats or oils other
than butterfat;

“milk” means milk from a cow;

“Non-Scheduled Areas” means all areas of land in
Kenya not for the time being comprised in the Scheduled
Areas;

“package” includes cask, keg, crate, can, box, case,
wrapper, tin, bottle, carton and every other receptacle or
covering used for the packing of dairy produce;

“producer” means a person who produces, processes,
manufactures, prepares or treats dairy produce for sale;

“registered producer” means a person registered under
Part V;

“retailer” means a producer who sells dairy produce
directly to consumers or a person who purchases dairy
produce from a distributor for resale to consumers;
"Scheduled Areas" means the areas of land specified in the Schedule;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver, or prepare for sale and any exchange or disposal for consideration.

Section 19 of Cap 336 which it is proposed to amend—

19. The Minister may, on the advice of the Board, make regulations generally for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations with regard to dairy produce—

(a) prescribing grades for any form of dairy produce, and minimum standards to which dairy produce shall conform, whether as a condition of importation or of exportation or of sale within Kenya;

(b) fixing the price to be paid for any grade or type of dairy produce to producers, distributors or retailers, with power to fix different prices on a basis of quota or for different seasons or circumstances;

(c) prescribing the manner of handling, transporting and storing of dairy produce intended for the use of or consumption by any person other than the producer thereof;

(d) regulating and controlling the manufacture of any form of dairy produce;

(e) imposing a levy or cess, payable to the Board, on any form of dairy produce, or imposing different rates as between different forms of produce, or as between produce for export and produce for consumption in Kenya;

(f) prescribing the terms and form in which contracts for the sale of milk by producers, other than producers who sell direct to consumers, shall be made, and making provision for the Board to be joined as an additional party to any such contract;
(g) providing for the creation and administration by the Board of schemes for the pooling of dairy produce by producers in such area or areas as may be prescribed and for the distribution to producers of the proceeds of sale of such dairy produce after payment to the Board, therefrom, of such sums as may be prescribed;

(h) controlling the sale, purchase and delivery by any person of dairy produce in such area as may be prescribed:

Provided that no distributor or retailer shall be compelled to buy dairy produce from a producer or distributor unless the Board guarantees a regular and sufficient supply of the dairy produce;

(i) prescribing the areas within which retailers may sell dairy produce to consumers;

(j) requiring the registration and licensing, in such manner and upon payment of such fees as may be prescribed, of distributors of dairy produce;

(k) requiring the giving of such security to the Board as the Board may specify a licensed distributor or retailer in respect of payment for dairy produce which a producer or distributor is directed by the Board to sell to the distributor or retailer;

(l) prescribing fees or charges for services rendered under this Act by the Board or its officers, servants or agents;

(m) prescribing the manner in which delegates to represent registered producers for the purposes of section 21 may be selected;

(n) requiring returns, reports and estimates to be furnished to the Board by producers, distributors and retailers;

(o) prescribing the forms of application, and of licences, marks, registers and all other documents to be used for the purpose of this Act;

(p) prescribing the manner of marking articles intended for use in connection with dairy
produce, including wrappers or packages intended to contain dairy produce;

(q) prescribing the qualifications, powers and duties of inspectors and other persons appointed to exercise powers and perform duties under this Act;

(r) for the examination, inspection, analysis and testing of dairy produce or any article used in connection with dairy produce, prescribing charges in respect thereof, and the conditions upon and the manner in which samples of such produce may be taken, whether compulsorily or otherwise;

(s) authorising the opening by prescribed persons or officers, for the purpose of inspection, of any package which contains or is reasonably thought to contain dairy produce;

(t) prescribing the books, accounts, vouchers and records to be kept by persons carrying on business in dairy produce;

(u) authorising the examination and inspection by prescribed persons or officers of all books and documents relating to the production, manufacture, distribution or sale of any dairy produce;

(v) making different provisions with respect to different cases or classes of case, different areas, seasons or circumstances, and for different purposes of this Act and may impose conditions and restrictions and make exceptions.

Section 20 of Cap 336 which it is proposed to amend—

20. Regulations made under this Act may provide for—

(a) their application to any specified area, or class of persons, or type or description of dairy produce;

(b) empowering such authorities or persons as may be specified in the regulations to make orders or issue directions for any of the purposes for which regulations are authorised by this Act to be made;
(c) imposing a fine or imprisonment or both for the breach of any such regulation, order or direction but so that the fine shall not exceed ten thousand shillings and the period of imprisonment shall not exceed one year;

(d) the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act or such regulations;

(e) imposing on any person accused of an offence under this Act or regulations the burden of proving particular facts, but not so as to impose on an accused person the general burden of proving his innocence.

Section 31 of Cap 336 which it is proposed to amend—

31. In this Part, “primary producer” means a person who produces milk for sale, but does not include persons employed by him for that purpose.

Section 33 of Cap 336 which it is proposed to amend—

33. After the appropriate period of one month referred to in section 32 has elapsed, a primary producer to whom this Part applies who carries on business as such without being registered in accordance with this Part, or who wilfully neglects to supply the particulars prescribed by that section, or who knowingly or recklessly supplies any such particulars which are materially false, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

Long title of No. 4 of 2006 which it is proposed to amend—

An Act of Parliament to provide for the establishment of the Kenya National Bureau of Statistics for the collection, compilation, analysis, publication and dissemination of statistical information, and the coordination of the national statistical system, and for connected purposes
Section 2 of No. 4 of 2006 which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

“authorised officer” means a person appointed as such under section 10;

“Board” means the Board of Directors of the Bureau established under section 5;

“Bureau” means the Kenya National Bureau of Statistics established under section 3;

“census” means a statistical operation in which all units of the population of interest are enumerated;

“Chairman” means the Chairman of the Board of Directors;

“Director-General” means the Director-General appointed under section 8;

“Minister” means the Minister for the time being responsible for matters relating to Statistics;

“national statistical system” includes producers and users of statistics working under the supervision and coordination of the Bureau;

“Population and Housing Census” means a Population and Housing Census conducted by the Board under section 17;

“statistical information” means information collected by the Bureau, for purposes of this Act, on the matters set out in the First Schedule;

“statistics” means any quantity collected as summary of data.

Section 4 of No. 4 of 2006 which it is proposed to amend—

4. (1) The Bureau shall be the principal agency of the Government for collecting, analysing and disseminating statistical data in Kenya and shall be the custodian of official statistical information.

(2) Without prejudice to the generality of subsection (1), the Bureau shall be responsible for—
(a) planning, authorising, co-ordinating and supervising all official statistical programmes undertaken within the national statistical system;

(b) establishing standards and promoting the use of best practices and methods in the production and dissemination of statistical information across the national statistical system;

(c) collecting, compiling, analyzing, abstracting and disseminating statistical information on the matters specified in the First Schedule;

(d) conducting the Population and Housing Census every ten years, and such other censuses and surveys as the Board may determine; and

(e) maintaining a comprehensive and reliable national socio-economic database.

Section 5 of No. 4 of 2006 which it is proposed to amend—

5. (1) The management of the Bureau shall vest in a Board of Directors which shall consist of—

(a) a Chairman appointed by the President;

(b) the Permanent Secretary in the Ministry for the time being responsible for Statistics;

(c) the Permanent Secretary in the Ministry responsible for Finance; and

(d) five other members appointed by the Minister to represent the bodies for the time being recognized by the Government as representing—

(i) the private sector;

(ii) the non-Governmental organizations;

(iii) research institutions;

(iv) the public universities; and

(v) the National Co-ordinating Agency for Population and Development.

(2) Every appointment to the Board under section 6(1) shall be by name and by notice in the Gazette and shall be for a renewable period of three years.

Establishment and composition of the Board.
(3) A person shall be qualified to be appointed under subsection (1)(d) if such person has a university degree in—

(a) statistics;
(b) information technology;
(c) economics;
(d) social sciences; or
(e) mathematics,

in addition to knowledge and experience in the matters to which the functions of the Board relate.

Section 6 of No. 4 of 2006 which it is proposed to amend—

6. (1) The functions of the Board shall be to—

(a) formulate and monitor the implementation of policies pertaining to the Bureau;
(b) determine from time to time, the structure and staffing levels of the Bureau;
(c) recruit suitable staff for the Bureau upon such terms and conditions as it may determine;
(d) promote professionalism and discipline among the staff of the Bureau by facilitating professional training;
(e) approve the Bureau’s corporate plan, annual work programmes and annual budgets; and
(f) submit to the Minister a quarterly report on the activities of the Bureau.

(2) The Board may collaborate with such other bodies within or outside Kenya as it may consider desirable or appropriate in furtherance of the purpose for which the Bureau is established.

Section 8 of No. 4 of 2006 which it is proposed to amend—

8. There shall be a Director-General of the Bureau who shall, subject to this section, be appointed by the Board, on such terms and conditions of service as the Board may determine.
(2) A person shall not be qualified for appointment as the Director-General unless such person has an advanced degree in a relevant field as specified in section 5(3) and at least ten years experience in the management of public or private institutions.

(3) The Director-General shall be the chief executive officer of the Bureau and the secretary to the Board and the committees.

(4) In the exercise of his functions under this Act, the Director-General shall, subject to the direction of the Board—

(a) be responsible for the day-to-day management of the Bureau;
(b) manage the funds and property of the Bureau;
(c) be responsible for the management of the staff of the Bureau;
(d) cause to be prepared for the approval of the Board—
   (i) the annual work programmes of the Bureau; and
   (ii) the annual budget, and audited accounts of the Bureau.

Section 13 of No. 4 of 2006 which it is proposed to amend—

13. The Board shall, not less than four months before the commencement of any financial year, prepare and submit to the Minister for approval in concurrence with the Treasury, estimates of the Bureau’s revenue and expenditure for that financial year, and once such approval has been given no expenditure shall be made for which provision has not been made in such estimates.

Section 17 of No. 4 of 2006 which it is proposed to amend—

17. The Minister may, on the advice of the Board, by order published in the Gazette direct that a Population and Housing Census be taken for Kenya or for any part thereof or in respect of any class of inhabitants thereof, and any such directions may specify—
(a) the date or dates on or between which the census is to be taken;

(b) the persons by whom the returns for the purpose of the census are to be made; and

(c) the information to be obtained in the census.

Section 18 of No. 4 of 2006 which it is proposed to amend—

18. (1) Any agency other than the Bureau, wishing to conduct a census or survey at national, or local level shall seek the approval of the Board.

(2) The agency referred to in subsection (1) shall submit its plans to the Board three months before the intended survey, and the Board may approve or decline to approve such plans.

(3) An agency which obtains approval under subsection (2) shall upon completion of the survey, submit copies of its report to the Board.

Section 19 of No. 4 of 2006 which it is proposed to amend—

19. (1) Where any census is being taken or any statistical information is being collected under this Act, an authorised officer may, in the manner specified in this section, require any person to supply him with such particulars as may be prescribed or such particulars as may be required in relation to the taking of the census or the collection of the information.

(2) A person required to provide information under subsection (1) shall, to the best of his knowledge, information and belief, complete such forms, make such returns, answer such questions and give such information in such manner and within such time as may be specified by the authorized officer.

(3) An authorized officer may require any person or establishment to supply him with particulars either by interviewing the person or by leaving at or posting to his last known address a form having thereon a notice requiring the form to be completed and returned in such manner and within such time as shall be specified in the notice.
(4) Where any particulars are, by any document issued by an authorized person, required to be supplied by any person, it shall be presumed until the contrary is proved that the particulars may lawfully be required from that person in accordance with this Act.

Section 20 of No. 4 of 2006 which it is proposed to amend—

20. Any person or establishment having the custody of, or being in charge of, any public records or documents of any local authority from which information sought in furtherance of the purposes of this Act can, in the opinion of the Director-General, be obtained, or which would aid in the completion or correction of information already obtained, shall grant the Director-General access to such records or documents for the purposes of obtaining therefrom the required information.

Section 23 of No. 4 of 2006 which it is proposed to amend—

23. (1) The Director-General may at the request of any person or agency and upon payment of such fee, if any, as may be prescribed by the Board, provide to that person or agency, any special information or report concerning, or carry out for that person or agency any special investigation into, any of the matters specified in the First Schedule:

Provided that the person requesting for information shall undertake in writing, to the satisfaction of the Director-General—

(a) to use the information so obtained only for research purposes; and

(b) not to release such information to any other person except with the prior written consent of the Director-General.

(2) The Director-General may, with the approval of the Board, cause statistical data collected by the Bureau to be disseminated to the public after ascertaining its accuracy and safeguarding the confidentiality with respect to the information.
Section 24 of No. 4 of 2006 which it is proposed to amend—

24. (1) Any person who hinders or obstructs the Director-General or any authorized officer in the execution of any powers conferred under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

(2) Any person who wilfully fails to give any information or particular as required under this Act commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Section 26 of No. 4 of 2006 which it is proposed to amend—

26. Any person who—

(a) makes a statement which he knows to be false or has no reason to believe to be true in any returns or estimates in response to a reasonable request for information for the purposes of this Act;

(b) being employed in the execution of any duty under this Act, without lawful authority, publishes or communicates to any person, other than in the ordinary course of such employment, any information obtained by him in the course of his employment;

(c) being in possession of information which might influence or affect the market value of any share or other security, interest, product or article by virtue of his employment, uses it for personal gain before it is made public;

(d) knowingly compiles for issue any false statistics or statistical information;

(e) possessing any information which, to his knowledge, has been disclosed in contravention of this Act, publishes or communicates such information to any person;
(f) in the execution of any duty under this Act, fails to comply with or contravenes any terms or conditions of his oath or affirmation taken under this Act;

(g) without lawful authority destroys, defaces or mutilates any schedule, form or other document containing particulars obtained under this Act; or

(h) contravenes any provision of this Act in respect of which no penalty has been prescribed, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Section 29 of No. 4 of 2006 which it is proposed to amend—

29. The Board may with the approval of the Minister make regulations for the better carrying into effect of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may—

(a) prescribe the particulars to be furnished in relation to any matter in respect of which statistical information may be collected under this Act;

(b) prescribe the manner and form in which the times and places at which and the person by whom particulars shall be furnished.

First Schedule of No. 4 of 2006 which it is proposed to amend—

FIRST SCHEDULE [Section 4, 23.]

MATTERS CONCERNING WHICH STATISTICAL INFORMATION MAY BE COLLECTED, COMPILED, ANALYSED, ABSTRACTED AND PUBLISHED

1. Population.

2. Vital occurrences and morbidity.

3. Immigration, emigration, hotels and tourism.

4. Housing.
5. Rents.
6. Real property.
7. Land tenure and the occupation and use of land.
8. Finance.
11. Savings.
12. Income, earnings, profits and interest.
13. Personal expenditure and consumption.
15. Banking, insurance and finance.
16. Wholesale and retail trade including agents and brokers.
17. Manufacturing, building, construction and allied industries.
18. Mining and quarrying, including the prospecting of metallic, non-metallic, petroleum and natural gaseous products.
19. Agriculture, including animal husbandry, horticulture and allied industries.
20. Forestry and logging.
22. Stock of manufactured and unmanufactured goods.
23. Producer, wholesale and retail prices of commodities.
24. Storage and warehousing.
25. Employment and unemployment.
26. Salaries, wages, bonuses, fees, allowances and other payments.
27. Industrial disturbances and disputes.
28. Injuries, accidents and compensation.
29. Energy.
30. Water undertakings and sanitary services.  
31. Transport and communications.  
32. Local Government.  
33. Community, business, recreation and personal services.  
34. Handicrafts and rural industries.  
35. Sweepstakes, lotteries, charitable and other public collections of money.  
37. Co-operatives.  
38. Environment.  
39. Informal sector.  
40. Health and nutrition.  
41. Information technology.  
42. Education and literacy.  

Section 67 of No. 12 of 2006 which it is proposed to amend—

67. The Authority shall—

(a) manage the Rural Electrification Programme Fund established under section 79;  
(b) develop and update the rural electrification master plan;  
(c) implement and source additional funds for the rural electrification programme;  
(d) promote use of renewable energy sources including but not limited to small hydros, wind, solar, biomass, geothermal, hybrid systems and oil fired components taking into account specific needs of certain areas including the potential for using electricity for irrigation and in support of off-farm income generating activities;  
(e) manage the delineation, tendering and award of contracts for licences and permits for rural electrification; and
(f) to perform such other functions as the Board may direct.

Section 3 of No. 13 of 2011 which it is proposed to amend—

3. The objects and purposes of this Act are to establish a legislative framework for—

(a) classification of areas as urban areas or cities;
(b) governance and management of urban areas and cities;
(c) participation by the residents in the governance of urban areas and cities; and
(d) other matters for the attainment of the objects provided for in paragraphs (a) to (c).

Section 4 of No. 55 of 2012 which it is proposed to amend—

4. (1) There shall be an office of the Registrar of Micro and Small Enterprises which shall be an office in the public service.

(2) The office of Registrar shall be headed by an officer who shall be designated the Registrar of Micro and Small Enterprises.

(3) The Registrar shall be responsible for the registration of micro and small enterprises in accordance with the provisions of this Act.

Section 4 of No. 55 of 2012 which it is proposed to amend—

29. (1) There is established an authority to be known as the Micro and Small Enterprises Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
(c) borrowing money or making investments;
(d) entering into contracts; and
(e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Section 31 of No. 55 of 2012 which it is proposed to amend—

31. The functions of the Authority shall be to—

(a) formulate and review policies and programs for micro and small enterprises;

(b) monitor and evaluate the implementation of existing policies and programmes related to, or affecting, micro and small enterprises and advise the Government on appropriate policies and course of action to be taken;

(c) coordinate, harmonize and facilitate the integration of various public and private sector activities, programmes and development plans relating to micro and small enterprises;

(d) promote and facilitate research, product development and patenting in the micro and small enterprises sector;

(e) promote the mainstreaming of youth, gender and persons with disabilities in all micro and small enterprises activities and programs;

(f) mobilize resources for the development of micro and small enterprise sector;

(g) promote access to markets by micro and small enterprises;

(h) promote innovation and development of products by micro and small enterprises;

(i) formulate capacity building programmes for micro and small enterprises;

(j) facilitate technology development, acquisition and transfer by micro and small enterprises;

(k) develop mechanisms, tools and programs for collection of comprehensive data disaggregated features of the Authority.
by sex, region and age among others, in collaboration with key stakeholders, to enable proper planning for the, micro and small enterprises sector.

Section 48 of No. 55 of 2012 which it is proposed to amend—

48. The Authority shall, in partnership with the relevant Government Ministries, agencies and public and private training institutions, as the Authority may deem necessary—

(a) develop and administer certified demand-driven capacity building and entrepreneurship programmes;

(b) promote the technological modernization and development of micro and small enterprises;

(c) promote and provide business development services for the micro and small enterprises.

Section 49 of No. 55 of 2012 which it is proposed to amend—

49. In order to promote the development of market for goods and services from micro and small enterprises, the Authority shall, in partnership with the relevant Government Ministries and agencies and other stakeholders—

(a) provide technical assistance in the development of products;

(b) identify markets for products generated by micro and small enterprises and provide linkages between the micro and small enterprises and potential markets;

(c) organize trade fairs and shows in order to promote products generated by micro and small enterprises;

(d) conduct market research, survey and analysis.
Section 51 of No. 55 of 2012 which it is proposed to amend—

51. (1) There is hereby established a Fund to be known as the Micro and Small Enterprises Development Fund.

(2) The purpose of the fund shall be to—

(a) finance the promotion and development of micro and small enterprises in accordance with this Act;

(b) provide affordable and accessible credit to micro and small enterprises;

(c) finance capacity building of micro and small enterprises;

(d) finance research, development, innovation and transfer of technology.

(3) The Cabinet Secretary may, by notice in the Gazette, fix the size of the Fund sufficient to facilitate the promotion and development of micro and small enterprises.

(4) The Fund shall consist of—

(a) such monies or assets as may accrue to or vest in the Fund under this Act;

(b) such moneys as may be payable to the Fund pursuant to this Act or any other written law;

(c) interest accruing on the Fund;

(d) such gifts as may be given to the Fund; and

(e) all moneys from any other source provided, donated or lent to the Fund.

(5) The monies constituting the Fund shall be placed in an account to be used for the promotion and development of micro and small enterprises, and the surplus monies of the fund shall be invested by the Authority in treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund.
Section 53 of No. 55 of 2012 which it is proposed to amend—

53. (1) Any community-based organisation, non-governmental organisations, association, umbrella organization, or any other institution involved in the promotion and development of the micro and small enterprise sector activities may, on application to the Authority, access funds for various micro and small enterprise programmes.

(2) Any association or umbrella organization registered under this Act may, on an application to the Authority, access funds by way of loan, factoring, guarantee and micro-insurance from the Fund for the benefit of its members.

(3) The Cabinet Secretary may, in consultation with the Authority, by Regulations make provision for—

(a) the procedure to be followed by a person seeking to access funds from the Fund;

(b) forms to be used while making an application under this section;

(c) the amounts that may be accessed;

(d) the kind of securities that may be given by an applicant under this section;

(e) the rates of interest on the loan; or

(f) the maximum period of loan repayment.

(4) The organization of the management and the Regulations governing the Fund receipts and expenses, custody and use shall be drawn up by the Authority.

Section 4 of No. 15 of 2013 which it is proposed to amend—

4. (1) There is established a Committee to be known as the Public Private Partnership Committee which shall consist of—

(a) the Principal Secretary in the State department for the time being responsible for matters relating to finance who shall be the chairperson to the Committee;
(b) Deleted by Act No. 14 of 2015, s. 59;

(c) the Principal Secretary in the State department for the time being responsible for matters relating to national planning;

(d) the Principal Secretary in the State department for the time being responsible for matters relating to lands;

(e) the Principal Secretary in the State department for the time being responsible for matters relating to county government;

(f) the Attorney General or a person deputized by him in writing;

(g) four persons not being public officers, who shall be appointed by the Cabinet Secretary;

(h) the Director appointed under section 12, who shall be the secretary to the Committee;

(i) the Principal Secretary in the State department for the time being responsible for transport;

(j) the Principal Secretary in the State department for the time being responsible for infrastructure; and

(k) the Principal Secretary in the State department for the time being responsible for energy.

(2) The persons under subsection (1)(g) shall hold office for a term of five years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1)(g) if that person—

(a) holds a degree from a university recognized in Kenya; and

(b) has at least ten years professional experience in the relevant field.

(4) The Committee shall be the successor to the Public Private Partnership Steering Committee existing immediately before the commencement of this Act and all rights and obligations which, immediately before the commencement of this Act, were vested in or imposed on
the Public Private Partnership Steering Committee shall by virtue of this section, be deemed to be the rights and obligations of the Committee.

Section 5 of No. 15 of 2013 which it is proposed to amend—

5. The members of the Committee shall be paid such allowances as the Cabinet Secretary shall determine in consultation with the Salaries and Remuneration Commission.

Section 6 of No. 15 of 2013 which it is proposed to amend—

6. (1) The office of a member of the Committee appointed under section 4(1)(g) shall become vacant if the member—

(a) is adjudged bankrupt;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is convicted of an offence involving fraud or dishonesty;

(d) is absent, without reasonable cause, from three consecutive meetings of the Committee;

(e) resigns in writing addressed to the Cabinet Secretary;

(f) is removed from office by the Cabinet Secretary for—

(i) being unable to perform the functions of his office by reason of mental or physical infirmity; or

(ii) failing to declare his interest in any matter being considered or to be considered by the Committee; or

(g) dies.

(2) Before the removal of a member under subsection (1)(f), the Cabinet Secretary shall request the Committee to—
(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

Section 14 of No. 15 of 2013 which it is proposed to amend—

14. (1) The functions of the unit are to—

(a) serve as the secretariat and technical arm of the Committee; and

(b) provide technical, financial and legal expertise to the Committee and any node established under this Act.

(2) In the performance of its functions under subsection (1), the unit shall—

(a) serve as a resource centre on matters relating to public private partnerships;

(b) conduct civic education to promote the awareness and understanding of the public private partnerships process amongst stakeholders;

(c) provide capacity building to, and advise contracting authorities or other parties involved in the planning, co-ordinating, undertaking or monitoring of projects under this Act;

(d) rate, compile and maintain an inventory of public private partnership projects that are highly rated and which are likely to attract private sector investment;

(e) develop an open, transparent, efficient and equitable process for managing the identification, screening, prioritization, development, procurement, implementation and monitoring of projects, and ensure that the process is applied consistently to all projects;

(f) conduct research and gap analysis to ensure continuous performance improvement in the implementation of public private partnerships;
(g) collate, analyse and disseminate information including data on the contingent liabilities of the Government in relation to a project;

(h) make recommendations on the approval or rejection of projects prior to submission to the Committee for approval;

(i) assist contracting authorities, where the unit considers it necessary, to design, identify, select, prioritise, appraise, evaluate and negotiate projects;

(j) maintain a record of all project documentation;

(k) review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project;

(l) assist the Committee in formulating guidelines and standard documentation required under this Act;

(m) liaise with and assist the contracting authorities in their roles in the various stages of a project cycle;

(n) ensure that the tendering process relating to a project conforms to this Act and to procurement best practices;

(o) put in place measures to eliminate constraints limiting the realisation of benefits expected from a public private partnership;

(p) monitor contingent liabilities and accounting and budgetary issues related to public private partnerships with the relevant offices within the State department responsible for finance; and

(q) carry out such other functions as may be conferred on it by the Committee and this Act.

(3) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any success fees received by it from a private party or project company as the case may be, under this Act.
Section 17 of No. 15 of 2013 which it is proposed to amend—

17. (1) A node shall, on behalf of the contracting authority—

(a) identify, screen and prioritize projects based on guidelines issued by the Committee;

(b) prepare and appraise each project agreement to ensure its legal, regulatory, social, economic and commercial viability;

(c) ensure that the parties to a project agreement comply with the provisions of this Act;

(d) undertake the tendering process in accordance with this Act and any other written law;

(e) monitor the implementation of a project agreement entered into with the contracting authority;

(f) liaise with all key stakeholders during the project cycle;

(g) oversee the management of a project in accordance with the project agreement entered into by the contracting authority;

(h) submit to the unit, annual or such other period reports on project agreements entered into by the contracting authority;

(i) maintain a record of all documentation and agreements entered into by the contracting authority relating to a project under this Act;

(j) prepare projects in accordance with guidelines and standard documents issued by the Committee under this Act;

(k) ensure that the transfer of assets at the expiry or early termination of a project agreement is consistent with the terms and conditions of the project agreement, where the project agreement involves a transfer of assets; and

(l) carry out such other functions as may be assigned to it by the contracting authority.
(2) In performing its functions under subsection (1), a node shall report to the unit and shall—

(a) implement the recommendations and guidelines issued by the unit; and

(b) submit such information as shall be required by the unit or the Debt Management Office.

Section 27 of No. 15 of 2013 which it is proposed to amend—

27. The Cabinet Secretary may, in consultation with the Debt Management Office and the Committee, where it considers it necessary to support a project and in order to reduce premiums factored for political risks, issue a guarantee, undertaking or binding letters of comfort in relation to a project.

Section 28 of No. 15 of 2013 which it is proposed to amend—

28. (1) In setting the price for the purpose of determining the cost of delivering a facility or services in relation to a project under this Act, the parties to a public private partnership shall be guided by the prevailing market rates based on competition or, where it is not possible to determine the prevailing market rates, the setting of the price shall be based on the full allocation of cost of such facilities or services or on international best practices.

(2) The cost of delivering a facility or service determined under subsection (1) shall be affordable to the Government and provide value for money to the contracting authority while enabling the private party to maintain its financial integrity, attract capital, operate efficiently and compensate a private party for any assumed risk.

(3) The Committee may, where it considers it appropriate and in consultation with the unit, impose a success fee on a transaction to be paid by a successful bidder in accordance with the tender documents.

(4) The Cabinet Secretary shall make rules for determining the success fees under this section.
Section 30 of No. 15 of 2013 which it is proposed to amend—

30. The Committee shall issue guidelines for the identification, selection, pre-tender approval, tendering, negotiation, post-tender approval and monitoring processes of public private partnerships.

Section 31 of No. 15 of 2013 which it is proposed to amend—

31. (1) A contracting authority which intends to implement a project through a public private partnership under this Act, together with the unit and the node, shall, subject to section 24, be responsible for conceptualizing or identifying potential projects and undertaking the preparatory and tendering process of the project.

(2) In conceptualizing, identifying and prioritizing potential projects under this Act, a contracting authority shall consider the strategic and operational benefits of entering into a public private partnership arrangement compared to the development of the facility or provision of the service by the contracting authority.

(3) Where a contracting authority considers it appropriate to implement a project through a public private partnership, it shall submit a report of the consideration and analysis under subsection (2) and a project proposal in relation to the project to the Committee for approval in the prescribed form.

(4) A contracting authority that receives approval under subsection (3) shall, apply the recommendations of the unit in all its procedures while undertaking the project.

Section 33 of No. 15 of 2013 which it is proposed to amend—

33.(1) A contracting authority shall, in consultation with the unit and upon the approval of the project proposal by the Committee, undertake a feasibility study of the project it intends to implement under a public private partnership for the purpose of determining the viability of undertaking the project under this Act.

(2) In undertaking a feasibility study under subsection (1), a contracting authority shall consider—
(a) the technical requirements of the project;
(b) the legal requirements to be met by the parties to the project;
(c) the social, economic and environmental impact of the project; and
(d) the affordability, value for money and public sector comparator for the project as prescribed in the regulations made under this Act.

*Section 37 of No. 15 of 2013 which it is proposed to amend—*

37. (1) A contracting authority shall, upon the approval by the Committee, invite requests for qualification by notice in at least two newspapers of national circulation and in the electronic media.

(2) A contracting authority shall, in the notice issued under subsection (1), specify the eligibility criteria of a bidder and may require bidders to provide such statements or documents as proof of their eligibility.

(3) The publication of any advertisement and the tendering process under this Part shall be undertaken by the contracting authority in consultation with the unit.

*Section 45 of No. 15 of 2013 which it is proposed to amend—*

45. (1) A contracting authority may, in consultation with the unit and with the approval of the Committee, hold a competitive dialogue with each bidder to define the technical or financial aspects of the project in the manner prescribed under this Act.

(2) A contracting authority may require a bidder to submit to the authority, a technical and financial non-binding proposal for discussion with the authority.

(3) A competitive dialogue under subsection (1) shall be held with each bidder on the basis of equality and transparency.

(4) The discussions held during a competitive dialogue shall be confidential and shall not be disclosed to any person by any party to the discussions.
(5) After concluding the competitive dialogue stage, the contracting authority may alter project specifications, risk matrix or structure and may re-open pre-qualification for the project, while keeping the initial pre-qualified parties qualified.

Section 48 of No. 15 of 2013 which it is proposed to amend—

48. (1) The proposal evaluation team shall invite the bidders who have been pre-qualified on the basis of their technical bid under section 47 to attend a meeting for purpose of opening the bids on the financial offer.

(2) The proposal evaluation team shall evaluate the tenders on the financial bid and determine the bid that meets the requirements specified in the tender documents.

(3) In evaluating a bid under subsection (1), the proposal evaluation team shall take into account the economic advantage that would accrue to the contracting authority if the bid is accepted and the comparative balance for the financial and technical elements of the bid set out in the tender documents.

(4) The Committee shall not take part in the process of evaluating bids submitted to the contracting authority.

(5) The proposal team shall evaluate bids under this Part in accordance with regulations made by the Cabinet Secretary under this Act.

Section 52 of No. 15 of 2013 which it is proposed to amend—

52. (1) A contracting authority may, with the approval of the Committee—

(a) enter into negotiations with the successful bidder; and

(b) request the second ranked bidder to extend the validity of its bid pending the completion of negotiations with the successful bidder.

(2) The contracting authority shall constitute a negotiating committee consisting of—
(a) one person nominated by the unit from among its members;
(b) one person nominated by the node from among its members;
(c) such persons representing such State departments as the contracting authority may, in consultation with the unit, consider necessary; and
(d) where applicable, the transaction advisors appointed by the contracting authority under section 36.

(3) The negotiating committee shall enter into negotiations with the successful bidder on the technical and financial terms of the project agreement.

(4) The negotiations carried out under subsection (3) and the resolution of the parties to the negotiations shall not result in an increase in pricing and shall not affect the non-negotiable terms and conditions specified as non-negotiable conditions in the invitation to tender, the financial structure, or the conditions in respect of which there were no reservations raised by the bidder in the bid.

(5) The parties to a negotiation under this section shall not amend the negotiated terms and terms upon which the bid has been evaluated.

(6) Where the parties to the negotiations carried out with the successful bidder are unsuccessful, the negotiating committee shall enter into negotiations with the second ranked bidder.

(7) The provisions of subsection (3), (4) and (5) shall apply to the negotiations with the second ranked bidder.

(8) The negotiating committee shall conduct the negotiations in accordance with the regulations made by the Cabinet Secretary under this Act.

Section 54 of No. 15 of 2013 which it is proposed to amend—

54. (1) The unit shall submit the project report, the financial risk assessment report submitted to it under section 53 and its recommendations to the Committee for consideration.
(2) The Committee shall consider the reports submitted to it under subsection (1) and prepare a report on its recommendations as to whether the project may be undertaken as a public private partnership under this Act.

(3) The Cabinet Secretary and the Cabinet Secretary in the State department responsible for the implementation of the project shall prepare a joint cabinet memorandum based on the recommendations of the Committee under subsection (2) and submit the memorandum to the Cabinet for approval.

(4) Where a project does not pose contingent liabilities to the national or county government, a county government may approve the undertaking of the project within that county under this Act in accordance with regulations made by the Cabinet Secretary under this Act.

Section 57 of No. 15 of 2013 which it is proposed to amend—

57. The contracting authority shall, where the Cabinet approves or Parliament ratifies the undertaking of a project as a public private partnership under this Act, execute the contract awarded to that bidder.

Section 58 of No. 15 of 2013 which it is proposed to amend—

58. (1) A contracting authority may cancel a tender process at any time before the execution of the contract if fundamentally serious adverse consequences are likely to occur if the tender process is allowed to go on.

(2) A contracting authority shall not cancel a tender unless the Committee approves the cancellation and the proposal evaluation team submits its recommendations to the contracting authority on the cancellation of the tender.

(3) A cancellation by a contracting authority under subsection (1) shall be by notice in writing issued to the bidders of a tender advertised by the contracting authority and shall contain reasons for the cancellation of the contract by the authority.

(4) A notice issued by a contracting authority under subsection (3) shall include the reasons for the cancellation.
(5) The bidders of a tender that is cancelled under this section shall not be entitled to compensation for the cancellation of the tender.

Section 61 of No. 15 of 2013 which it is proposed to amend—

61. (1) A contracting authority may consider a privately initiated investment proposal for a project and procure the construction or development of a project or the performance of a service by negotiation without subjecting the proposal to a competitive procurement process where—

(a) there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical:

    Provided that the circumstances giving rise to the risk of disruption were not foreseeable by the contracting authority or the result of an unreasonable failure to act by the contracting authority;

(b) the costs relating to the intellectual property in relation to the proposed design of the project is substantial;

(c) there exists only one person or firm capable of undertaking the project, maintaining the facility or providing the service or such person or firm has exclusive rights over the use of the intellectual property, trade secrets or other exclusive rights necessary for the construction, operation or maintenance of the facility or provision of the service; or

(d) there exists any of the circumstance as the Cabinet Secretary may prescribe.

(2) A contracting authority shall, before commencing negotiations with a private party under this section—

(a) prescribe criteria against which the outcome of negotiations shall be evaluated;
(b) submit the proposal to the unit for consideration and recommendation;

(c) upon obtaining the recommendations of the unit, apply for and obtain approval from the Committee to negotiate the contract; and

(d) conduct the negotiations and award the tender in accordance with the prescribed process in the regulations to this Act.

(3) A contracting authority shall not consider a project for procurement under this section unless it is satisfied that—

(a) the project shall provide value for money;

(b) the project shall be affordable; and

(c) the appropriate risks are transferred to the private party.

Section 63 of No. 15 of 2013 which it is proposed to amend—

63. (1) A project agreement entered into by a contracting authority under this Act shall be subject to the provisions of the Laws of Kenya and any provision in the agreement to the contrary shall be void.

(2) Where there is a conflict between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail.

(3) Upon the approval of the Committee, it may be agreed to resolve disputes arising under the project agreement though arbitration, or any other non-judicial means of dispute resolution agreed upon in the project agreement as specified in paragraph 18 of the Third Schedule.

Section 64 of No. 15 of 2013 which it is proposed to amend—

64. (1) A party who intends to make any amendment or variation to a project agreement in relation to the terms and conditions specified therein, the outputs of a project or any waivers specified in the agreement shall apply for, and obtain the approval of the Committee.
(2) The Committee shall not approve an amendment, variation or waiver to a project agreement under subsection (1) unless it is satisfied that the agreement, if so amended or varied, shall ensure—

(a) the project continues to provide value for money;

(b) the project continues to be affordable as verified by the Debt Management Office, where such amendment, variation or waiver has a financial implication;

(c) the continued transfer of appropriate risks to the private party;

(d) the continued provision of efficient and effective service to the public; and

(e) the continued protection and preservation of the environment.

(3) The approval of the Committee under subsection (2) shall be in writing.

Section 65 of No. 15 of 2013 which it is proposed to amend—

65. (1) A contracting authority that is a party to a project agreement shall, together with sector regulators, where applicable ensure that the project agreement is properly implemented by—

(a) monitoring the implementation of the project agreement;

(b) measuring the output of the project;

(c) liaising with the private party, users of the facility or service and other relevant stakeholders;

(d) overseeing the management of the project agreement;

(e) preparing periodic reports on the project agreement implementation; and

(f) submitting reports on the project agreement implementation to the Committee in June and December in each year of the project.
(2) The contracting authority shall appoint an independent expert to manage, in consultation with the authority, the implementation of the project agreement by the parties.

(3) A project agreement involving the performance of a function of a contracting authority by a private party shall not divest the contracting authority of the responsibility for ensuring that its function is effectively and efficiently performed in the public interest or on behalf of public service.

(4) A project agreement involving the use of a contracting authority’s property by the private party shall not divest the contracting authority of the responsibility for ensuring that the property is appropriately protected against factors which may negatively affect the property including forfeiture, theft, loss and wastage.

(5) The Committee shall oversee the implementation of every project under this Act.

(6) The sector regulatory bodies shall play an active role in the project implementation phase through monitoring the performance of the contracting authority and the private party in accordance with the procedures prescribed by the Cabinet Secretary under this Act.

Section 71 of No. 15 of 2013 which it is proposed to amend—

71. The Cabinet Secretary, may make regulations generally for the better carrying out of functions under this Act and in particular, for prescribing—

(a) anything required to be prescribed under this Act;

(b) guidelines to be observed by a contracting authority in the entire project cycle;

(c) provide for the minimum value of investment cost and tenor for a public private partnership project less than which will not be subject to this Act;

(d) provide for the procedure of appointment of the Committee;
(e) the role of the unit and the State department responsible for finance after the execution of the project agreement by the parties;

(f) the maximum value of a performance security during the construction and operation phases of a project; and

(g) financial and other forms of disclosure by a contracting authority under this Act.

(2) The Cabinet Secretary may——

(a) give general directions to the Committee relating to the execution of its functions under this Act; and

(b) provide policy guidelines to the Committee on the financing, construction, operation, equipping and maintenance of infrastructure or development projects under this Act.

First Schedule of No. 15 of 2013 which it is proposed to amend——

FIRST SCHEDULE [Section 10(1).]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

1. (1) The Committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the chairperson.

(2) The Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Director of the unit.

(4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.
(5) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

(6) The members of a Committee shall elect a vice-chairperson from among themselves—

(a) at the first sitting of the Committee; and
(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

(8) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.

(2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.
5. The Committee shall—
   (a) determine rules of procedure for the conduct of its business; and
   (b) keep minutes of its proceedings and decisions.

Section 2 of No. 16 of 2013 which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

   “Authority” means the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013 (No. 13 of 2013);

   “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

   “co-operative society” means a co-operative society registered under the Co-operative Societies Act (Cap. 490);

   “dealing in crop” includes collecting, transporting, storing, buying or selling crops or crop products but in the case of food crops, excludes any non-commercial activity;

   “scheduled crop” means any of the crops listed under the First Schedule and includes such other crop as the Cabinet Secretary, on the advice of the Authority, may declare to be a scheduled crop under section 7;

   “non-scheduled crop” means any plant other than a scheduled crop that is grown in significant quantities to be harvested as food, or used as livestock fodder, fuel, or for any other economic purpose; and

   “licensing authority” means the Authority of the county government as the case may be.

Section 8 of No. 16 of 2013 which it is proposed to amend—

8. In addition to the functions stipulated under any other law, the Authority shall—
   (a) formulate general and specific policies for the development of scheduled crops specified in the First Schedule;
   (b) facilitate marketing and distribution of scheduled crops through monitoring and dissemination of
market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on scheduled crops;

(c) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting scheduled crops, for purposes of reducing marketing costs and ensuring stable consumer supply;

(d) promote the establishment of wholesale markets in identified major centres of the country;

(e) promote the establishment of agricultural produce collection centres in viable areas to serve as buying stations of farm products, packaging houses, pick-up points and meeting places of farmers' and growers' cooperatives;

(f) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;

(g) in consultation with the National Biosafety Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;

(h) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;

(i) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;

(j) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to
determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets;

(k) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;

(l) ensure secure domestic food supply for the country;

(m) formulate policies and guidelines on dealing with other crops;

(n) promote and advise on strategies for value addition prior to the export of crops from Kenya;

(o) recommend general industry agreements between farmers and processors of scheduled crops;

(p) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and

(q) perform any other relevant function.

Section 9 of No. 16 of 2013 which it is proposed to amend—

9. (1) There is established a Fund to be known as the Commodities Fund.

(2) The Fund shall consist of—

(a) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in the Authority in the course of exercise of its functions under the Act;

(b) funds from any other lawful source approved by the Trustees; and

(c) funds appropriated by Parliament for this purpose.

(3) The Fund shall be managed by a Board of Trustees to be appointed by the Cabinet Secretary.
Section 10 of No. 16 of 2013 which it is proposed to amend—

10. (1) The Fund shall be used to provide sustainable affordable credit and advances to farmers for all or any of the following purposes—

(a) farm improvement;

(b) farm inputs;

(c) farming operations;

(d) price stabilization; and

(e) any other lawful purpose approved by the Authority.

(2) The Authority shall, from time to time, make rules for the better management of the Fund in the best interest of farmers.

Section 13 of No. 16 of 2013 which it is proposed to amend—

13. (1) The Authority shall regulate all aspects of scheduled crops with a view to—

(a) promoting productivity;

(b) facilitating the provision of farm inputs;

(c) promoting trade and access to markets;

(d) facilitating provision of infrastructure;

(e) providing post-harvest services and technology;

(f) facilitating the collection of farm products and storage;

(g) training of farmers and provision of extension services;

(h) providing of incentives to farmers;

(i) availing credit facilities; and

(j) value addition.

(2) For purposes of subsection (1) the Authority shall have the power to issue guidelines requiring registration of any particulars in respect of different categories of scheduled crops.
(3) The Authority shall maintain the necessary statistical information with respect to the scheduled crops to enable proper planning.

Section 18 of No. 16 of 2013 which it is proposed to amend—

18. (1) A person shall not manufacture or process a scheduled crop product for sale except under and in accordance with a licence issued under this Act.

(2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.

(3) The licensing authority may, after consultation with the county executive—

(a) issue a manufacturing licence, in accordance with this Act;

(b) refuse to issue the licence on any ground which may appear to the licensing authority to be sufficient and inform the applicant in writing of the reasons thereof;

(c) cancel, vary or suspend any licence if in the findings of the licensing authority, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities.

(4) A manufacturing licence issued under this section shall, in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending a crop product.

Section 2 of No. 29 of 2013 which it is proposed to amend—

2. (1) In this Act, unless the context otherwise requires—

“accreditation” means the process by which the Board formally recognizes and confirms by certification that an institution has met and continues to meet the standards of academic, training and competence excellence set by the Board in accordance with the provisions of this Act;
“Authority” means the Technical and Vocational Educational and Training Authority established under section 6;

“Board” means the Technical and Vocational Education and Training Board established under section 8 of this Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to technical and vocational education and training;

“certificate” means the level of qualification below diploma or its equivalent;

“Certification Council” means the technical and Vocational Education and Training Curriculum Development, Assessment and Certification Council established under section 44(1) of this Act;

“Commission” means the Commission for the time being in charge of university education;

“Diploma” means the level of qualification below degree and above a certificate;

“Fund” means the Technical and Vocational Education Fund established under section 47;

“institution” means an institution that promotes or offers technical and vocational education and training;

“National Polytechnic” means an institution declared a National Polytechnic in accordance with this Act;

“private institution” means an institution which is not a public institution;

“public institution” means an institution established or maintained by use of public funds or by the community;

“technical and vocational college” means an institution offering technical and vocational education and training at diploma level;

“technical trainer college” means an institution offering technical teachers training at higher diploma level;

“trainer” means a person registered under section 25(1)(b);
"training" includes technical, industrial and vocational education and training leading to an award of a certificate, diploma;

"university" means a university within the meaning of the Universities Act, 2012;

"vocational training center" means an institution providing training leading to the awards below the level of diploma.

(2) Notwithstanding subsection (1), until the first general elections under the Constitution, the expressions "Cabinet Secretary" and "Principal Secretary" shall be construed to mean "Minister" and "Permanent Secretary" respectively.

Section 46 of No. 29 of 2013 which it is proposed to amend—

46. (1) The Certification Council shall consist of—
   (a) a chairman appointed by the Cabinet Secretary;
   (b) the Principal Secretary of the Ministry for the time being responsible for TVET;
   (c) the Director-General of the Authority;
   (d) six members appointed by the Cabinet Secretary as follows—
      (i) one member from the Senate of a technical university;
      (ii) one member from among the principals of Technical Colleges;
      (iii) one member from the national polytechnics;
      (iv) not more than three members from industry with complementary competencies;
      (e) the Council Secretary who shall be the secretary to the Council.

(2) The chairman shall hold office for a period not exceeding three years but shall be eligible for reappointment.

(3) The members appointed under subsection (1)(d) shall, hold office for a period of three years and shall be eligible for reappointment.
(4) Where any member of the Council other than an ex officio member is unable to attend any meetings of the Council by reason of physical or mental incapacity, the Cabinet Secretary shall appoint his place at that meeting.

(5) Member of the Council shall vacate office if the member—

(a) is convicted of an offence and sentenced to imprisonment for a term of six months or more;

(b) is adjudicated bankrupt; or

(c) unable to perform the functions of office by a reason of physical or mental incapacity.

(6) The provisions relating to the appointment of the Director-General and staff members of the Authority as set out in sections 9 and 10 shall apply, mutatis mutandis, to the appointment of the Director and staff of the Council.

(7) The provisions relating to the financial provisions of the Authority as set out in sections 11, 12, 13, 14, 15 and 16 shall apply, mutatis mutandis, to the Council.

(8) Subject to this Act, the Council shall have power to regulate its own procedure.

Section 52 of No. 29 of 2013 which it is proposed to amend—

52. Admission of students into technical and vocation education institutions shall be conducted by the Service established under the law relating to universities.

Section 58 of No. 29 of 2013 which it is proposed to amend—

58. (1) Notwithstanding the provisions of the Education Act (Cap. 211) or regulations made thereunder, all technical or vocational training institutions established by Orders made under that Act shall within a period of two years from the date of the commencement of this Act, seek accreditation from the Authority in accordance with the provisions of this Act.

(2) Notwithstanding the provisions of subsection (1) all acts, directions, orders, appointments, requirements, authorizations, other things given, taken or done under, and all funds, assets and other property acquired by virtue of
those Orders shall, so far as not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

(3) All statutes or regulations made under the orders referred to in subsection (1) which are in force immediately before the commencement of this Act shall continue in force but may be amended or revoked by a statute or regulations made under this Act.

Section 2 of No. 33 of 2015 which it is proposed to amend—

2. (1) In this Act, unless the context otherwise requires—

"accounting officer" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

"appeal" means a request for administrative review or complaint filed with the Appeals Review Board pursuant to section 167 of this Act;

"assets" means movable and immovable property, tangible and intangible, including immovable property, stores, equipment, land, buildings, animals, inventory, stock, natural resources like wildlife, intellectual rights vested in the state or proprietary rights;

"Authority" means the Public Procurement Regulatory Authority established under section 8 of this Act;

"Board" means the Public Procurement Regulatory Board established under section 10 of this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"candidate" means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity;

"citizen contractor" means a person or a firm wholly owned and controlled by persons who are citizens of Kenya;

"common-user items" means goods, works or services that are usable by procuring entities across the board irrespective of type or category, and the items include office equipment, furniture, motor vehicles and stationery;
"complex and specialized contracts" means contracts that include procurement where the terms and conditions of an agreement are different from standard commercial terms and conditions;

"consultancy services" means services of predominantly an intellectual, technical or advisory nature, and includes services offered by all professionals;

"contract period" means the period between contract signing and the end of the defects liability period;

"contract administration" means management of terms of procurement or asset disposal contracts made with contractors or suppliers after tender award by a procuring entity, for the purpose of assuring compliance with obligations such as timely delivery, quality and quantity inspection, acceptance, payment, claims, dispute resolution and completion, among other terms;

"contractor" means a person who enters into a procurement contract with a procuring entity, and includes the main contractor;

"corruption" has the meaning assigned to it under section 2 of the Anti-Corruption and Economic Crimes Act 2003 (No. 3 of 2003);

"design competition" means a procurement procedure for obtaining competitive tenders for services which are creative in nature and which require that part of the services be carried as part of the tender to facilitate evaluation of the tenders and such services may include architecture, landscaping, engineering, urban design projects, urban and regional planning, fine arts, interior design, marketing, advertising and graphic designs;

"Director-General" means the Director-General of the Authority provided for under section 15 of this Act;

"disadvantaged group" means persons denied by mainstream society access to resources and tools that are useful for their survival in a way that disadvantages them or individuals who have been subjected to prejudice or cultural bias because of their identities as members of groups or categories of persons without regard to their individual qualities, and includes enterprises in which a majority of the members or shareholders are youth, women, persons with disability or categories as shall be prescribed;
"disposal" means the divestiture of public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, auction or any combination however classified;

"electronic reverse auction" means an online real-time purchasing technique utilized by the procuring entity to select the successful submission, which involves the presentation by tenderers, suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;

"e-procurement" means the process of procurement using electronic medium such as the internet or other information and communication technologies;

"framework agreement" means a pact between a procuring entity and a selected supplier (or suppliers) or contractor (or contractors) identified for a definite term to supply goods works or service whose quantities and delivery schedules are not definable or determinable at the beginning;

"framework contract" means a pact between a procuring entity and a selected supplier (or suppliers) or contractor (or contractors) identified for a definite term to supply goods works or service whose quantities and deliveries are not definable or determinable at the beginning, with a commitment to order a minimum quantity of the required goods, works, or services;

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;

"financial year" has the meaning assigned to it under Article 260 of the Constitution;

"fiscal agency" means a person or an organization, or trust company, that acts on behalf of the Government of Kenya in performing various financial duties, including
assistance in the arrangement for issuance of international sovereign bonds, redemption of bonds or coupons, handle tax issues, replace lost or damaged securities;

"goods" includes raw materials, products, equipment, commodities in solid, liquid or gaseous form, electricity and services that are incidental to the supply of the goods, works and services;

"loans" has the meaning assigned to it under Article 260 of the Constitution;

"locally produced product or service" means goods and services that are manufactured in Kenya by firms that are registered and undertaking their business in Kenya;

"obstruction" means acts intended to materially impede access to required information in exercising a duty under this Act;

"person" has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship;

"person with disability" means a person with disability who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of the shareholders, members or persons and a majority of the directors are persons with disability;

"public procurement" means procurement by procuring entities using public funds;

"prescribed" means prescribed by Regulations under this Act;

"preference" means the right or opportunity to select a tenderer from an identified target group that is considered more desirable than another;

"pre-qualification" means the procedure to identify and shortlist tenderers that are qualified, prior to invitation for tenders;

"pre-qualification procedure" means a procedure by which candidates are invited to demonstrate their qualifications prior to, and as a condition for, being invited to tender or submit proposals;
"Principal Secretary" means the Principal Secretary for the time being responsible for matters relating to finance;

"procurement" means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods including livestock or any combination and includes advisory, planning and processing in the supply chain system;

"procuring agent" means an organization which has been registered by the Authority, and competitively engaged by a procuring entity on its behalf, or an organization established under this Act, to carry out procurement or asset disposal activities;

"procurement contract" means an agreement concluded between the procuring entity and a contractor (or contractors) resulting from a tendering proceeding;

"procuring entity" means a public entity making a procurement or asset disposal to which this Act applies;

"procurement professional" means a person who has professional qualifications in procurement or supply chain management from a recognised institution and is a member of the Kenya Institute of Supplies Management established under the Supplies Practitioners Management Act, 2007 (No. 20 of 2007);

"procurement function" means a division within a procuring entity staffed with procurement professionals who are officially concerned with managing the procurement and asset disposal process and reports directly to the head of procuring entity functionally and administratively;

"professional" means a person who has professional qualifications in a specialized field and who is engaged in the practice of a skill or trade, having undertaken the relevant formal academic and professional training including undertaking practical learning in the form of apprenticeship or tutelage under the guidance of a suitably qualified and experienced person in the field of training or tutelage;
“professional body” means a body representing members of a profession, which is regulated by statute, code of conduct or rules as may be amended from time to time;

“public entity” includes—
(a) the national government or any organ or department of the national government;
(b) a county government or any organ or department of a county government;
(c) the Judiciary and the courts;
(d) the Commissions established under the Constitution;
(e) the Independent Offices established under the Constitution;
(f) a state corporation within the meaning of the State Corporations Act (Cap. 446);
(g) the Central Bank of Kenya established under the Constitution;
(h) a public school within the meaning of the Basic Education Act, 2013 (No. 14 of 2013);
(i) a public university within the meaning of the Universities Act, 2012 (No. 42 of 2012);
(j) a city or urban area established under the Urban Areas and Cities Act, 2011 (No. 13 of 2011);
(k) a company owned by a public entity;
(l) a county service delivery coordination unit under the National Government Co-ordination Act, 2013 (No. 1 of 2013);
(m) a constituency established under the Constitution;
(n) a Kenyan diplomatic mission under the state department responsible for foreign affairs;
(o) a pension fund for a public entity;
(p) a body that uses public assets in any form of contractual undertaking including public private partnership;
(q) a body in which the national or county government has controlling interest;

(r) a college or other educational institution maintained or assisted out of public funds;

(s) an entity prescribed as a public entity for the purpose of this paragraph; or

(t) any other entity or a prescribed class of public entities or particular public entities that uses public money for purposes of procurement or any other entity as declared under sections 4 and 5 of the Public Finance Management Act, 2012 (No. 18 of 2012);

"public money" includes monetary resources appropriated to procuring entities through the budgetary process, as well as extra budgetary funds, including aid, grants and loans, put at the disposal of procuring entities by donors;

"public private partnership" has the meaning assigned to it under section 2 of the Public Private Partnership Act, 2013 (No. 15 of 2013);

"publicise" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

"registration of suppliers" means the process of identifying and obtaining a list of prospective providers of a specified category of goods, works or services by a procuring entity for a specified period of time but not exceeding more than two years, and maintaining them for the purpose of inviting them on rotational basis for subsequent tendering proceedings such as request for quotations or restricted tendering, that may arise during the period of listing;

"regulations" means regulations made under this Act;

"Review Board" means the Public Procurement Administrative Review Board established under section 27 of this Act;

“reservations” means exclusive preference to procure goods, works, and services set aside to a defined target group of tenderers within a specified threshold or region;
"services" means any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, non-professional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services;

"standard" means characteristics or set of characteristics for an item which for reasons of quality level or compatibility with other products is accepted by the manufacturers and users of that item as a required characteristic for all items of that type;

"supplier" means a person who enters into a procurement contract with a procuring entity to supply goods, works or services;

"supply chain management" means the design, planning, execution control and monitoring of supply chain activities which includes procurement, purchasing, logistics, transportation, warehousing, storage, stock control, contract management and distribution, with an objective of creating value to meet the objectives of the procuring entity;

"tender" means an offer in writing by a candidate to supply goods, services or works at a price; or to acquire or dispose stores, equipment or other assets at a price, pursuant to an invitation to tender, request for quotation or proposal by a procuring entity;

"tenderer" means a person who submitted a tender pursuant to an invitation by a public entity;

"tender box" means a lockable secure physical or virtual box where tenders are submitted including by electronic means so as to be opened only after the tender submission deadline;

"tender security" means a guarantee required from tenderers by the procuring entity and provided to the procuring entity to secure the fulfillment of any obligation in the tender process and includes such arrangements as bank or insurance guarantees, surety bonds, standby letters of credit, cheques for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange tender securing declaration, or other guarantees from institutions as may be prescribed;
"urgent need" means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable;

"user department" means the unit of a procuring entity that requisitions the goods, works or services being procured;

"works" means a combination of goods and services for the construction, repair, renovation, extension, alteration, dismantling or demolition of buildings, roads or other structures and includes—

(a) the designing, building, installation, testing, commissioning and setting up of equipment and plant;
(b) site preparation; and
(c) other incidental services;

"woman" means a person of the female gender who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of the shareholders, members or persons and a majority of its directors are of the female gender;

"writing" means printing, photography, facsimile, lithography, typewriting, electronic media and any other means of representing or reproducing words in a visible form; and

"youth" means a person who has attained the age of eighteen years and has not attained the age of thirty-five years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of shareholders are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

Section 7 of No. 33 of 2015 which it is proposed to amend—

7. (1) The National Treasury established under section 11 of the Public Finance Management Act, 2012, shall be responsible for public procurement and asset disposal policy formulation.
(2) In the performance of its role under subsection (1), the National Treasury shall—

(a) formulate, evaluate, promote and research on national and county public procurement and asset disposal policy and standards;

(b) develop policy guidelines for the efficient procurement management and disposal system for national executive;

(c) design and prescribe an efficient procurement management system for the national and county governments to ensure transparent procurement and asset disposal as contemplated by Article 227 of the Constitution:

Provided that the National Treasury shall prescribe through Regulations a system under this paragraph which operates, respects and promotes the distinctiveness of the national and county levels of government;

(d) provide technical assistance on procurement and assist in the implementation and operation of the public procurement and asset disposal system;

(e) manage and administer the scheme of service of the procurement and supply chain management services cadre for the national government;

(f) carry out general research, develop and promote electronic procurement strategies and policies in both the national and county governments including state corporations and other government agencies;

(g) carry out review of procurement and supply chain management system to assist procuring entities;

(h) develop and review policy on procurement of common user items in the public sector both at national and county government levels;

(i) develop policy on the administration of preference and reservations scheme and registration of target groups under preference and reservations scheme as prescribed;

(j) facilitate affirmative action for disadvantaged groups in accordance with the Constitution and advance their participation in the procurement process;
(k) develop and review policies and guidelines on the management of assets;
(l) issue guidelines to public entities with respect to procurement matters; and
(m) perform such other functions as prescribed by this Act or any other legislation.

(3) The National Treasury may prescribe an institutional framework to provide for the procurement, administration and management of common user items for the national government.

Section 9 of No. 33 of 2015 which it is proposed to amend—

9. The functions of the Authority shall be to—

(a) monitor, assess and review the public procurement and asset disposal system to ensure that they respect the national values and other provisions of the Constitution, including Article 227 and make recommendations for improvements;

(b) monitor the public procurement system and report on the overall functioning of it and present to the Cabinet Secretary and the county executive member for finance in each county, such other reports and recommendations for improvements;

(c) enforce any standards developed under this Act;

(d) monitor classified procurement information, including that of specific items of security organs and make recommendations to the Cabinet Secretary;

(e) monitor the implementation of the preference and reservation schemes by procuring entities;

(f) prepare, issue and publicise standard public procurement and asset disposal documents and formats to be used by public entities and other stakeholders;

(g) provide advice and technical support upon request;
(h) to investigate and act on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative review;

(i) research on the public procurement and asset disposal system and any developments arising from the same;

(j) advise the Cabinet Secretary on the setting of standards including international public procurement and asset disposal standards;

(k) develop and manage the State portal on procurement and asset disposal and ensure that it is available and easily accessible;

(l) monitor and evaluate the preference and reservations provided for under this Act and provide quarterly public reports;

(m) create a central repository or database that includes—

(i) complaints made on procuring entities;

(ii) a record of those prohibited from participating in tenders or those debarred;

(iii) market prices of goods, services and works;

(iv) benchmarked prices;

(v) State organs and public entities that are non-compliant with procurement laws;

(vi) statistics related to public procurement and asset disposal;

(vii) price comparisons for goods, services and works; and

(viii) any information related to procurement that may be necessary for the public;

(n) inform, as applicable, the Cabinet Secretary, Parliament, the relevant County Executive member for finance, the relevant County Assembly or Auditor-General on issues of non-compliance with procurement laws once the
relevant State organ or public entity ignores the written directives of the Authority, including material breaches of the measures established under this Act;

(o) generally report to Parliament and the relevant county assembly;

(p) develop a code of ethics to guide procuring entities and winning bidders when undertaking public procurement and disposal with State organs and public entities;

(q) in undertaking its functions, cooperate with state and non-state actors with a view to obtaining recommendations on how public procurement and disposal can be improved;

(r) ensure the procurement entities implement the preference and reservations and provide data to the Authority disaggregated to indicate the number of disadvantaged groups that have benefitted;

(s) perform such other functions and duties as are provided for under this Act and any other relevant law.

(2) If in the course of monitoring in accordance with section 9(1)(a), the Authority is of the opinion that civil or criminal proceedings ought to be preferred against a State Organ, public entity, state officer or public officer, the Authority shall refer the matter to the relevant authorities.

Section 26 of No. 33 of 2015 which it is proposed to amend—

26. (1) For each financial year, the Board shall cause an annual report to be prepared.

(2) The Board shall submit to the Cabinet Secretary the quarterly reports within thirty days after the end of the quarter and the annual report within three months after the end of the year to which the report relates.

(3) The reports shall contain, in respect of the period to which they relate—

(a) a description of the activities of the Authority;
(b) a report on how the public procurement and disposal systems are working and those that are subject of controversy or litigation;

(c) a report on the overall functioning of the public procurement system;

(d) a report on matters under Article 227(2) of the Constitution; and

(e) a report on the compliance with this Act by each county government.

(4) In addition to what is required under subsection (3), each annual report shall include the financial statements of the Authority for the year to which the report relates.

(5) The Cabinet Secretary shall, within thirty days after receiving a report, transmit it to Parliament and the relevant county assembly.

(6) The Board shall publish and publicize the draft report within two weeks after the expiry of seven (7) days upon submission to the Cabinet Secretary.

Section 39 of No. 33 of 2015 which it is proposed to amend—

39. The procuring entity and any other person who was entitled to be given an opportunity to make representations under section 38 (2) may request for Judicial Review against an order of the Board to the High Court within fourteen days after the order is made.

Section 40 of No. 33 of 2015 which it is proposed to amend—

40. (1) No investigation shall be commenced or continued under this Part, and no order shall be made under this Part, in relation to an issue that the Review Board is reviewing or has reviewed under the relevant provisions of this Act.

(2) Subsection (1) ceases to apply if, after the Review Board has completed its review, information comes to the attention of the Board that was not brought before the Review Board in the course of its review.
Section 41 of No. 33 of 2015 which it is proposed to amend—

41. (1) The Board shall debar a person from participating in procurement or asset disposal proceedings on the ground that the person—

(a) has committed an offence under this Act;

(b) has committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction;

(c) has breached a contract for a procurement by a public entity including poor performance;

(d) has, in procurement or asset disposal proceedings, given false information about his or her qualifications;

(e) has refused to enter into a written contract as required under section 135 of this Act;

(f) has breached a code of ethics issued by the Authority pursuant to section 181 of this Act or the code of ethics of the relevant profession regulated by an Act of Parliament;

(g) has defaulted on his or her tax obligations;

(h) is guilty of corrupt or fraudulent practices; or

(i) is guilty of a serious violation of fair employment laws and practices.

(2) Without limiting the generality of subsection (1) the Board may debar a person from participating in any procurement process if that person—

(a) has breached the requirements of the tender securing declaration form in the tender documents; or

(b) has not performed according to professionally regulated procedures.

(3) The Authority, may also debar a person from participating in procurement or asset disposal proceedings—
(a) on the recommendation of a law enforcement
organ with an investigative mandate;

(b) on grounds prescribed by the Authority in
Regulations.

(4) A debarment under this section shall be for a
specified period of time of not less than three years.

(5) The procedure for debarment shall be prescribed
by Regulations.

Section 43 of No. 33 of 2015 which it is proposed to
amend—

43. (1) The Authority, or anyone authorised by the
Authority, may inspect, assess, review or audit at any
reasonable time, the records and accounts of the procuring
entity and contractor relating to the procurement or disposal
proceeding or contract and the procuring entity and
contractor or tenderer shall co-operate with and assist
whoever does such an inspection.

(2) The Authority shall conduct procurement audits
during the tender preparation, contract audit in the course
of execution of an awarded tender; and performance audit
after the completion of the contract in respect of any
procurement or asset disposal as may be required.

(3) The inspector shall have access to all relevant
books, records, returns, reports and other documents of the
procuring entity or a person who participated in the
procurement or asset disposal proceedings, including
electronic documents.

(4) The inspector may remove or make copies of any
documents he or she has access to.

(5) Where an inspector removes a document from the
promises, the inspector shall certify a copy of the document
to be left with the procuring entity;

(6) The inspector may require any of the following to
provide explanations, information and assistance—

(a) an employee or officer of the procuring entity; or

(b) an employee or a person who participated in the
procurement or asset disposal proceedings.
Subject to prescribed conditions and limitations, an inspector shall have additional powers as may be prescribed.

Where contraventions are discovered in the course of an inspection, the Authority may direct the procuring entity to take such actions as are necessary to rectify the contravention.

Section 44 of No. 33 of 2015 which it is proposed to amend—

44. (1) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.

(2) In the performance of the responsibility under subsection (1), an accounting officer shall—

(a) ensure that procurements of goods, works and services of the public entity are within approved budget of that entity;

(b) constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;

(c) ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;

(d) ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act;

(e) ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);

(f) approve and sign all contracts of the procuring entity;

(g) ensure the procurement and asset disposal process of the public entity shall comply with this Act;

(h) ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;
(i) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and

(j) ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations.

(3) The procurement plans prepared by the national security organs shall be exempted from submission to the National Treasury.

(4) An accounting officer involved in a procurement transaction on exploitation of natural resources shall comply with provisions of Article 71 of the Constitution and any other written law.

Section 46 of No. 33 of 2015 which it is proposed to amend—

46. (1) An Accounting officer shall ensure that an ad hoc evaluation committee is established in accordance with this Act and Regulations made thereunder and from within the members of staff, with the relevant expertise.

(2) In establishing the ad hoc evaluation committee referred to in subsection (1) above, the procuring entity that is a State Department or a County Department, shall do so in consultation with the Cabinet Secretary or the County Executive Committee member responsible for that entity, as the case may be.

(3) Despite subsection (1), where technical expertise is required from outside the organisation, such expertise may be obtained from other procuring entities or procured to join the committee, on recommendation, in writing, by the head of the procurement function, and the committee shall be appointed by the accounting officer, in writing.

(4) An evaluation committee established under subsection (1), shall—

(a) deal with the technical and financial aspects of a procurement as well as the negotiation of the process including evaluation of bids, proposals for prequalification, registration lists, Expression of Interest and any other roles assigned to it;
(b) consist of between three and five members appointed on a rotational basis comprising heads of user department and two other departments or their representatives and where necessary, procured consultants or professionals, who shall advise on the evaluation of the tender documents and give a recommendation on the same to the committee within a reasonable time;

(c) have as its secretary, the person in charge of the procurement function;

(d) complete the procurement process for which it was appointed and no new committee shall be appointed on the same issue unless the one handling the issue has been procedurally disbanded;

(e) adopt a process that shall ensure the evaluation process utilized adheres to Articles 201(d) and 227(1) of the Constitution.

(5) For greater certainty a procuring entity shall where a member of the ad hoc evaluation committee contravenes any provisions of this Act, institute disciplinary measures in accordance with the procuring entity's disciplinary measures and the provisions of this Act.

(6) Where a public entity lacks capacity to comply with this Act an accounting officer shall seek assistance from the National Treasury.

(7) Subject to this Act, the evaluation committee may invite external technical experts who are not employees of the organisation to assist in matters that need specific technical expertise.

(8) Notwithstanding the provisions in this section, the Cabinet Secretary may prescribe other procedures for evaluating low value procurements below specified thresholds.

Section 48 of No. 33 of 2015 which it is proposed to amend—

48. (1) An accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee.

(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members
appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.

(3) The inspection and acceptance committee shall immediately after the delivery of the goods, works or services—

(a) inspect and where necessary test the goods received;

(b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and

(c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

(4) The inspection and acceptance committee shall—

(a) ensure that the correct quantity of the goods is received;

(b) ensure that the goods, works or services meet the technical standards defined in the contract;

(c) ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;

(d) ensure that all required manuals or documentation has been received; and

(e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

Section 51 of No. 33 of 2015 which it is proposed to amend—

51. (1) A procuring entity may procure and appoint a procuring or asset disposal agent, as per this Act, including on a competitive basis to carry out such procurement or asset disposal on its behalf as per the terms of the contract.

(2) A procuring entity may not appoint a procuring or asset disposal agent unless that procuring entity—

(a) demonstrates lack of internal capacity;

(b) provides evidence of inability to establish a procurement and disposal unit; or
(c) demonstrates the inability to use the services of other State organs or public entities.

(3) The appointment of a procuring or asset disposal agent under subsection (2) shall be done only from amongst a list of agents registered and licensed by the Authority.

(4) A procuring entity shall, within fourteen days after the appointment of the agent, publicise the following details on its website—

(a) Name and address of the agent;
(b) value of the contract;
(c) items and value of items to be procured or disposed by the agent;
(d) duration of the contract; and
(e) method of procuring the agent.

(5) A state organ or public entity shall not appoint more than one agent for the same transaction.

(6) A state organ or public entity shall give preferential treatment to the local agents before seeking the services of an international procurement agent.

(7) For the preference for local agents, all the work shall be handled by agents of same region in question, and where an international agent has been procured, all functions that will be sublet and can be performed by citizens shall be sublet to persons who are citizens.

(8) A Procuring or disposal agent shall comply with the provisions of this Act.

Section 53 of No. 33 of 2015 which it is proposed to amend—

53. (1) All procurement by State organs and public entities are subject to the rules and principles of this Act.

(2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process.

(3) Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.
(4) All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations.

(5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.

(6) All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.

(7) Multi-year procurement plans may be prepared in a format set out in the Regulations and shall be consistent with the medium term budgetary expenditure framework for projects or contracts that go beyond one year.

(8) Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.

(9) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.

(10) For greater certainty, the procurement and disposal plans approved under subsection (5) shall include choice of procurement and disposal methods and certain percentages referred to under subsection (6).

(11) Any state or public officer who fails to prepare procurement and disposal plans shall be subject to internal disciplinary action.

Section 54 of No. 33 of 2015 which it is proposed to amend—

54. (1) No procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure except where prescribed.
(2) Standard goods, services and works with known market prices shall be procured at the prevailing market price.

(3) The Authority shall issue a quarterly market price index as reference guide to assist accounting officers make informed price decisions.

(4) Public officers involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall, in addition to any other sanctions prescribed in this Act or the Regulations made thereunder, be required to pay the procuring entity for the loss resulting from their actions.

Section 67 of No. 33 of 2015 which it is proposed to amend—

67. (1) During or after procurement proceedings and subject to subsection (3), no procuring entity and no employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity shall disclose the following—

(a) information relating to a procurement whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;

(b) information relating to a procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;

(c) information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or

(d) the contents of tenders, proposals or quotations.

(2) For the purposes of subsection (1) an employee or agent or member of a board, commission or committee of the procuring entity shall sign a confidentiality declaration form as prescribed.

(3) This section does not prevent the disclosure of information if any of the following apply—
(a) the disclosure is to an authorized employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings;

(b) the disclosure is for the purpose of law enforcement;

(c) the disclosure is for the purpose of a review under Part XV or requirements under Part IV of this Act;

(d) the disclosure is pursuant to a court order; or

(e) the disclosure is made to the Authority or Review Board under this Act.

(4) Notwithstanding the provisions of subsection (3), the disclosure to an applicant seeking a review under Part XV shall constitute only the summary referred to in section 67(2)(d)(iii).

(5) Any person who contravenes the provisions of this section commits an offence as stipulated in section 176(1)(f) and shall be debarred and prohibited to work for a government entity or where the government holds shares, for a period of ten years.

Section 69 of No. 33 of 2015 which it is proposed to amend—

69. (1) All approvals relating to any procedures in procurement shall be in writing and properly dated, documented and filed.

(2) No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on procurements in response to an urgent need.

(3) In approving procurements relating to an urgent need, the accounting officer shall be furnished with adequate evidence to verify the emergency.

(4) No procurement approval shall be made by a person exercising delegated authority as an accounting officer or head of the procurement function unless such delegation has been approved in writing by the accounting officer or the head of the procurement unit, respectively.
(5) An accounting officer of a procuring entity shall maintain specimen signatures of all persons authorised to make approvals within the procurement process and these signatures shall be availed to all staff and members where applicable.

(6) Responsibility for each approval made in the procurement procedure shall rest with the individual signatories and accounting officer, whether he or she delegated the authority or not.

Section 70 of No. 33 of 2015 which it is proposed to amend—

70. (1) The Authority shall issue standard procurement and asset disposal documents and formats as prescribed for use by procuring entities.

(2) A procuring entity shall use standard procurement and asset disposal documents prescribed under subsection (1), in all procurement and asset disposal proceedings.

(3) The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders.

(4) An accounting officer of a procuring entity shall be responsible for preparation of tender documents in consultation with the user and other relevant departments.

(5) A procuring entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents.

(6) The tender documents shall set out the following—

(a) the specific requirements prepared under section 60 relating to the goods, works or services being procured and the time limit for delivery or completion;

(b) if works are being procured, relevant drawings and bills of quantities shall be disclosed and the projects total estimated cost evaluated only on the basis of criteria disclosed, but a person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineer's estimates;
(c) the general and specific conditions to which the contract will be subject, including any requirement that performance security be provided before the contract is entered into;

(d) the tender number assigned to the procurement proceedings by the procuring entity;

(e) instructions for the preparation and submission of tenders including—
   (i) the forms for tenders;
   (ii) the number of copies to be submitted with the original tender;
   (iii) any requirement that tender security be provided and the form and amount of any such security;
   (iv) any requirement that evidence be provided of the qualifications of the person submitting the tender;
   (v) the procuring entity facilitation and the submission of tender documents by the tenderer through either soft or hard copy, but it will be the onus of the tenderer to ensure the adequate submission of said documents;
   (vi) the procurement function ensuring that where necessary, the preferences and reservations of the tender are clearly spelt out in the bidding documents.

(f) an explanation of where and when tenders shall be submitted, a statement that the tenders will be opened immediately after the deadline for submitting them and an explanation of where the tenders will be opened;

(g) a statement that those submitting tenders or their representatives may attend the opening of tenders;

(h) a statement of the period during which tenders must remain valid;

(i) the procedures and criteria to be used to evaluate and compare the tenders;
(j) a statement that the accounting officer of a procuring entity may, at any time terminate the procurement proceedings without entering into a contract in accordance with section 63 of the Act;

(k) a provision for providing details of sub-contractors for the bidder, where applicable, and a declaration that the sub-contractors have complied with this Act; and

(l) anything else required, under this Act or the regulations, to be set out in the tender documents.

Section 71 of No. 33 of 2015 which it is proposed to amend—

71. (1) The head of procurement function shall maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs.

(2) An application to be included in the list of the procuring entity may be made at anytime, at no cost and shall contain proof of the following—

(a) eligibility criteria as prescribed in this Act; and

(b) capability criteria that defines necessary qualifications, experience, resources, equipment and facilities to provide what is being procured;

(3) A tenderer may seek clarification from the candidate or relevant government agency on eligibility but not on capability.

(4) The lists shall be applied on the alternative procurement methods as specified and appropriate and the list shall —

(a) be generated through portal, websites and people submitting hard copies of their intention to supply;

(b) allow for continuous applications and hence updating;

(c) be evaluated leading to registration on a bi-annual basis;

(d) be generated through market knowledge and survey; and

(e) be as may be prescribed.
Section 80 of No. 33 of 2015 which it is proposed to amend—

80. (1) The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected under section 82(3).

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)—

(a) the criteria shall, to the extent possible, be objective and quantifiable;

(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and

(4) The evaluation committee shall prepare an evaluation report containing a summary of the evaluation and comparison of tenders and shall submit the report to the person responsible for procurement for his or her review and recommendation.

(5) The person responsible for procurement shall, upon receipt of the evaluation report prepared under subsection (4), submit such report to the accounting officer for approval as may be prescribed in regulations.

(6) The evaluation shall be carried out within a maximum period of thirty days.

(7) The evaluation report shall be signed by each member of evaluation committee.
Section 89 of No. 33 of 2015 which it is proposed to amend—

89. If there will not be effective competition for a procurement unless foreign tenderers participate, the following shall apply—

(a) the invitation to tender and the tender documents shall be in English;

(b) if the procuring entity is required to advertise the invitation to tender under sections 96(2) and 118(2), the procuring entity shall also advertise the invitation to tender in Kenya's dedicated tenders portal or one or more English-language newspapers or other publications that, together, have sufficient circulation outside Kenya to allow effective competition for the procurement;

(c) the period of time between the advertisement under paragraph (b) and the deadline for submitting tenders shall be not less than the minimum period of time prescribed for the purpose of this paragraph;

(d) the technical requirements shall, to the extent compatible with requirements under Kenyan law, be based on international standards or standards widely used in international trade;

(e) a tenderer submitting a tender may, in quoting prices or providing security, use a currency that is widely used in international trade and that the tender documents specifically allow to be used; and

(f) where local or citizen contractors participate they shall be entitled to preferences and reservations as set out in section 155.

(g) any other conditions as may be prescribed.

Section 92 of No. 33 of 2015 which it is proposed to amend—

92. Subject to this Act and prescribed provisions, an accounting officer of a procuring entity shall procure goods, works or services by a method which may include any of the following—
(a) open tender;
(b) two-stage tendering;
(c) design competition;
(d) restricted tendering;
(e) direct procurement;
(f) request for quotations;
(g) electronic reverse auction;
(h) low value procurement;
(i) force account;
(j) competitive negotiations;
(k) request for proposals;
(l) framework agreements; and
(m) any other procurement method and procedure as prescribed in regulations and described in the tender documents.

Section 94 of No. 33 of 2015 which it is proposed to amend—

94. (1) An accounting officer of a procuring entity shall promptly issue pre-qualification documents to all candidates who request them and shall maintain a record of all candidates to whom documents are issued.

(2) The pre-qualification document shall contain all the information specified in section 93 and any other information necessary for the potential candidates to prepare and submit applications to be pre-qualified.

(3) Without prejudice to the generality of paragraph (2), such information shall include—

(a) the name, address and contact details of the procuring entity;

(b) details of the procurement requirements, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;

(c) instructions on the preparation of applications to pre-qualify, including any standard forms to be
submitted and the documentary evidence and information required from candidates;
(d) instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and
(e) information on how applications will be evaluated.

(4) The accounting officer of a procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be pre-qualified.

(5) The accounting officer of a procuring entity shall promptly respond to all requests for any clarification relating to the pre-qualification document where such requests are received before the deadline for submission.

Section 98 of No. 33 of 2015 which it is proposed to amend—

98. (1) Upon advertisement, the accounting officer of a procuring entity shall immediately provide copies of the tender documents and in accordance with the invitation to tender and the accounting officer shall upload the tender document on the website.

(2) The accounting officer of a procuring entity may charge such fees as may be prescribed for copies of the tender documents.

Section 114 of No. 33 of 2015 which it is proposed to amend—

114. (1) A procuring entity may enter into a framework agreement open tender if—

(a) the procurement value is within the thresholds prescribed under Regulations to this Act;
(b) the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement; and
(c) a minimum of seven alternative vendors are included for each category.

(2) The maximum term for the framework agreement shall be three years and, for agreements exceeding one
year, a value for money assessment undertaken annually to determine whether the terms designated in the framework agreement remain competitive.

(3) When implementing a framework agreement, a procuring entity may—

(a) procure through call-offs order when necessary; or

(b) invite mini-competition among persons that have entered into the framework agreement in the respective category.

(4) For the purposes of subsection (3)(a), "call-offs order" means an order made using a framework agreement with one or more contractors, suppliers or consultants for a defined quantity of works, goods, consultancy covering terms and conditions including price that users require to meet the immediate requirements.

(5) Evaluation of bids under category specified by subsection (3)(b) shall be undertaken by an evaluation committee as provided for under this Act.

(6) A procurement management unit shall prepare and submit to the accounting officer with a copy to the internal auditor quarterly reports detailing an analysis of items procured through framework agreements and these reports shall include, an analysis of pattern of usage, procurement costs in relation to the prevailing market rates and any recommendations.

(7) For greater certainty procurements undertaken through framework agreements may be subject to preferences and reservations as provided for in this Act.

Section 117 of No. 33 of 2015 which it is proposed to amend—

117. Initiation of the procurement shall—

(a) be subject to section 74 of the Act.

(b) include in the terms of reference the expected milestones or performance benchmarks to be realized throughout the consultancy period and the related timelines.
Section 119 of No. 33 of 2015 which it is proposed to amend—

119. (1) An accounting officer of a procuring entity may prepare a notice inviting interested persons to submit expressions of interest as prescribed.

(2) The notice inviting expressions of interest shall set out the following—

(a) the name and address of the procuring entity;
(b) a brief description of the consultancy services being procured and, if applicable, the goods being procured;
(c) eligibility and the qualifications necessary to be invited to submit a proposal; and
(d) an explanation of where and when expressions of interest shall be submitted.

(3) An accounting officer of a procuring entity shall advertise the notice inviting expressions of interest in the dedicated government's advertising tenders' portal and in its own website, or in at least one daily newspaper of nationwide circulation.

(4) In regard to county-specific procurements pursuant to section 33 of this Act, an accounting officer of a procuring entity shall advertise the notice inviting expressions of interest in the dedicated government's advertising tenders portal, its own website, or in at least one daily newspaper of county-wide circulation as prescribed.

Section 121 of No. 33 of 2015 which it is proposed to amend—

121. (1) The accounting officer of a procuring entity shall, in writing, record the results of its evaluation of applications for expression of interest using the evaluation criteria in the expression of interest notice and documents and shall state which candidates were found to be qualified and the reasons why any candidates were not qualified.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the expression of interest documents and shall, in the case of expression of interest for professional services, have regard to the
provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

(3) Subject to total proposals received, a minimum of six proposals shall be shortlisted, but where less than six proposals have been received, a minimum of three proposals shall be shortlisted.

(4) The record of results prepared under subsection (1) shall be submitted to the accounting officer for review and approval.

Section 124 of No. 33 of 2015 which it is proposed to amend—

124. (1) The Procuring Entity shall select Quality and Cost Based Selection (QCBS) method as the preferred method to be used to evaluate proposals and shall state the selection procedure in the Request for Proposals.

(2) For the purposes of subsection (1), "Quality and Cost Based Selection" method is a method that uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm.

(3) The request for proposal shall request submission of both technical and financial proposals at the same time, but in separate envelopes.

(4) Subject to the foregoing provisions of this section, in the evaluation of tenders by public entities, the criteria for assessing the technical and financial capability of the tenderers shall be as may be prescribed by the accounting officer in the tender documents.

(5) The request for proposal under subsection (3) shall provide either the estimated budget or the estimated time of key experts, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

(6) Subject to prescribed restrictions, a procuring entity may use any of the following alternatives in the selection methods to evaluate proposals and shall state the selection method in the Request for Proposals—
(a) Quality Based Selection (QBS), which focuses on quality and selects the highest quality proposal;

(b) Least Cost Selection (LCS), which selects the lowest priced proposal, which meets the entity's technical requirements;

(c) Consultants Qualifications Selection (CQS);

(d) Individual Consultants Selection (ICS);

(e) Fixed Budget Selection; or

(f) Single Source Selection

(7) Quality Based Selection method shall be appropriate for—

(a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants;

(b) assignments that have a high downstream impact and in which the objective is to have the best experts;

(c) assignments that can be carried out in substantially different ways;

(d) assignments and professional services which are regulated by Acts of Parliament which stipulate fees and charges applicable for such assignments.

(8) Least-Cost Selection method under subsection (6)(b) shall be generally appropriate for selecting consultants for assignments of a standard or routine nature where well-established practices and standards exist.

(9) Fixed Budget Selection as a request form for proposal under subsection (6)(e) shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget.

(10) Fixed budget selection method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed.
(11) Proposals under Fixed Budget selection method that exceed the indicated budget shall be rejected and the consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

(12) Single Source Selection may be appropriate in the following cases, and only if it presents a clear advantage over competition—

(a) where it can be evidenced that goods, works or services are available only from a particular supplier, or a particular supplier has exclusive rights in respect of the consultancy services, and no reasonable alternative or substitute exists; or

(b) for tasks that represent a natural continuation of previous work carried out by the firm;

(c) in exceptional cases, such as, but not limited to, in response to natural disasters and for a declared national emergency situations.

(13) The accounting officer shall issue a written justification for single-source selection in the context of the overall interests of the procuring entity.

(14) Single Source Selection shall require a placement of advertisement of the intention to single source and invite anyone who wishes to bid and in the event that there is a response to the advert then all interested suppliers shall be invited to submit proposals.

(15) Where alternative methods are selected a report shall be prepared and submitted to the Authority for approval.

Section 126 of No. 33 of 2015 which it is proposed to amend—

126. (1) An evaluation committee of a procuring entity shall examine the proposals received in accordance with the request for proposals.

(2) The procedures for evaluation of the request for proposal shall be by using each selection method set out in section 124 and as may be prescribed.
(3) The evaluation shall be carried out within a maximum of twenty-one days, but shorter periods may be prescribed in the Regulations for particular types of procurement.

(4) When a person submitting the successful bid shall be notified, the accounting officer of the procuring entity shall at the same time notify in writing all other persons who had submitted bids that their bids were not successful and give reasons thereof.

(5) The notice of intention to enter into contract in subsection 87(2) shall, as applicable, be publicised on the procuring entity's website and other public notice boards that do not attract a cost.

Section 135 of No. 33 of 2015 which it is proposed to amend—

135. (1) The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.

(2) An accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.

(3) The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.

(4) No contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.

(5) An accounting officer of a procuring entity shall not enter into a contract with any person or firm unless an award has been made and where a contract has been signed without the authority of the accounting officer, such a contract shall be invalid.
(6) The tender documents shall be the basis of all procurement contracts and shall, constitute at a minimum—

(a) Contract Agreement Form;
(b) Tender Form;
(c) price schedule or bills of quantities submitted by the tenderer;
(d) Schedule of Requirements;
(e) Technical Specifications;
(f) General Conditions of Contract;
(g) Special Conditions of Contract;
(h) Notification of Award.

(7) A person who contravenes the provisions of this section commits an offence.

Section 136 of No. 33 of 2015 which it is proposed to amend—

136. (1) If the person submitting the successful tender refuses to enter into a written contract in writing as required under section 135 and section 64 of this Act, he or she shall forfeit his or her tender security and the procurement process shall proceed with the next lowest evaluated tenderer.

(2) This section does not apply if the period during which tenders shall remain valid has already expired.

Section 138 of No. 33 of 2015 which it is proposed to amend—

138. (1) The accounting officer of a procuring entity shall publish and publicise all contract awards on their notice boards at conspicuous places, and website if available within a period as prescribed.

(2) An accounting officer of a procuring entity shall report all contract awards to the Authority as prescribed.

(3) The Authority shall publish on its website notices of the reports on contract awards from procuring entities.

(4) The Authority shall issue written directions and guidelines governing the reporting requirements of contract awards by the accounting officer of procuring entities as may be prescribed in regulations.
(5) This section shall not apply to procurement contracts awarded by the national security organs.

Section 139 of No. 33 of 2015 which it is proposed to amend—

139. (1) An amendment or a variation to a contract resulting from a procurement proceeding is effective only if—

(a) the variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and

(b) any contract variations or amendments for goods, works and services shall be as prescribed.

(2) An accounting officer of a procuring entity, on the recommendation of an evaluation committee, may approve the request for the following, which request shall be accompanied by a certificate from the tenderer making a justification for such cost—

(a) extension of contract period;

(b) use of prime costs;

(c) use of contingencies;

(d) reimbursable costs; and

(e) use of provisional sums.

(3) No contract price shall be varied upwards within twelve months from the date of the signing of the contract.

(4) For the purposes of this section, any variation of a contract shall only be considered after twelve months from the date of signing the contract and shall only be considered if the following are satisfied—

(a) the price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;

(b) the quantity variation for goods and services does not exceed fifteen per cent of the original contract quantity;
(c) the quantity variation of works does not exceed twenty per cent of the original contract quantity;

(d) the price or quantity variation is to be executed within the period of the contract; and

(e) the cumulative value of all contract variations do not result in an increment of the total contract price by more than twenty five per cent of the original contract price.

(5) An accounting officer of a procuring entity shall submit a quarterly report of their varied or amended procurement contracts to the Authority.

(6) Where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately.

Section 167 of No. 33 of 2015 which it is proposed to amend—

167. (1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

(2) A request for review shall be accompanied by such refundable deposit as may be prescribed in the regulations, and such deposit shall not be less than ten per cent of the cost of the contract.

(3) A request for review shall be heard and determined in an open forum unless the matter at hand is likely to compromise national security or the review procedure.

(4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

(a) the choice of a procurement method;

(b) a termination of a procurement or asset disposal proceedings in accordance with section 62 of this Act; and
(c) where a contract is signed in accordance with section 135 of this Act.

Section 168 of No. 33 of 2015 which it is proposed to amend—

168. Upon receiving a request for a review under section 167, the Secretary to the Review Board shall notify the accounting officer of a procuring entity of the pending review from the Review Board and the suspension of the procurement proceedings in such manner as may be prescribed.

Section 169 of No. 33 of 2015 which it is proposed to amend—

169. The Review Board Secretariat shall reject a request for a review where no appeal fees were paid within the prescribed time.

Section 172 of No. 33 of 2015 which it is proposed to amend—

172. Review Board may dismiss with costs a request if it is of the opinion that the request is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceedings or performance of a contract and the applicant shall forfeit the deposit paid.

Section 173 of No. 33 of 2015 which it is proposed to amend—

173. Upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;
(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

Section 176 of No. 33 of 2015 which it is proposed to amend—

176. (1) A person shall not——

(a) obstruct or hinder a person carrying out a duty or function or exercising a power under this Act;

(b) knowingly lie to or mislead a person carrying out a duty or function or exercising a power under this Act;

(c) delay without justifiable cause the opening or evaluation of tenders, the awarding of contract beyond the prescribed period or payment of contractors beyond contractual period and contractual performance obligations;

(d) unduly influence or exert pressure on any member of an opening committee evaluation committee and disposal committee or on any employee or agent of a procuring entity or the accounting officer to take a particular action which favours or tends to favour a particular tenderer;

(e) open any sealed tender, including such tenders electronically submitted and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the tender or documents except for tenders inadvertently opened under section 78;

(f) divulge confidential information under section 66;

(g) inappropriately influence tender evaluations;

(h) split procurements contrary to section 60 of the Act;

(i) commit a fraudulent act;
(j) knowingly withholds the notification of award to a successful tenderer;

(k) knowingly withholds notification to unsuccessful tenderer;

(l) sign a contract contrary to the requirements of this Act or Regulations made thereunder; or

(m) contravene a lawful order of the Authority given under Part IV or the Review Board under Part XV.

(2) A person who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable upon conviction—

(a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both;

(b) if the person is a body corporate, to a fine not exceeding ten million shillings.

(3) In addition to the penalty under subsection (2), a state or public officer involved shall be subject to internal disciplinary action while any other person who is not a state or public officer shall be debarred.

(4) If a person or an employee or agent of a person contravenes the provisions of this Act, the following shall apply—

(a) the person shall be disqualified from entering into a contract for the procurement; or

(b) if a contract has already been entered into with the person, the contract shall be voidable at the option of the procuring entity.

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.
First Schedule of No. 33 of 2015 which it is proposed to amend—

FIRST SCHEDULE [section 14(1).]
PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) Meetings shall be convened by the Chairperson in consultation with the members.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairperson or in his absence by a person elected by the Board at the meeting for that purpose.

2. A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

3. (1) The Board shall elect one of its nominated members to be the Chairperson of the Board and another of its nominated members to be its Vice-chairperson.

(2) Subject to an earlier resignation or termination, the Chairperson and Vice-chairperson shall each hold office until their current term as a member of the Board expires.

4. The Director-General shall be the Secretary of the Board.

5. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Second Schedule of No. 33 of 2015 which it is proposed to amend—

SECOND SCHEDULE [section 31(3).]
PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE REVIEW BOARD

1. (1) The Review Board shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
(2) Meetings shall be convened by the Chairperson in consultation with the members, or in their absence by the Vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairperson or in his absence by the Vice-chairperson or in both their absences, by a person elected by the Board at the meeting for that purpose.

2. A decision of the Review Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

3. (1) The Review Board shall elect one of its nominated members to be the Chairperson of the Review Board and another of its nominated members to be its Vice-chairperson.

(2) Subject to an earlier resignation or termination, the Chairperson and Vice-chairperson shall each hold office until their current term as a member of the Review Board expires.

4. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Third Schedule of No. 33 of 2015 which it is proposed to amend—

THIRD SCHEDULE


TRANSITIONAL PROVISIONS

1. (1) Procurement proceedings commenced before the commencement date of this Act shall be continued in accordance with the law applicable before the commencement date of this Act.

(2) For the purposes of subparagraph (1), procurement proceeding commences when the first advertisement relating to the procurement proceeding is published or, if there is no advertisement, when the first documents are given to persons who wish to participate in the procurement proceeding.
2. Section 66 of this Act shall apply with respect to procurement proceedings completed before the commencement date of this Act.

3. Section 67 of this Act shall apply with respect to—
   (a) a procurement that took place before the commencement date of this Act; or
   (b) a procurement, the procurement proceeding for which was terminated before the commencement date of this Act.

(2) Section 51(2) of the Act, as it applies under subparagraph (1), does not require the record of a procurement to include anything that was not required before the commencement date of this Act.

4. Section 67 of this Act shall apply with respect to a contract formed before the commencement date of this Act comes.

5. Section 139 of this Act shall apply with respect to a contract formed before the commencement date of this Act but not to an amendment to such a contract made before the commencement date of this Act.

6. Section 140 of this Act shall apply to contracts formed before the commencement date of this Act and to amounts under such contracts that became overdue before the commencement date of this Act.

7. Sections 43 of this Act shall apply to procurement proceedings and contracts formed before the commencement of this Act including contracts that are no longer in force at the commencement date of this Act.

8. PARTS III and XV of this Act shall apply, with necessary modifications, with respect to procurement and disposal proceedings commenced before the commencement date of this Act.

9. An investigation of procurement proceedings by the Authority shall be continued under Part III and the provisions of that Part shall apply, with necessary modifications.

10. The grounds for debarring a person from participating in procurement proceedings under section 41 include previous actions.
of this Act extend to anything done before the commencement date of this Act that would constitute a ground under that section.

11. Regulations contemplated under this Act shall be made within a period of one year immediately after the effective date of the Act.

Section 2 of No. 3 of 2016 which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

"Authority" means the National Youth Employment Authority" established by section 6;

"Board" means the Board of the Authority constituted pursuant to section 10;

"Cabinet Secretary" means the Cabinet Secretary of the ministry for the time being responsible for matters relating to labour;

"contract of service" means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship, internship and indentured learnership;

"disability" means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation;

"employee" means a person employed for wages or a salary and includes an apprentice, intern and indentured learner;

"employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

"job seeker" means a person who is seeking for employment;

"Kenyan" means a citizen of Kenya as defined in the Constitution;
"register" mean a register maintained by the Authority under section 24; and

"youth" has the meaning assigned to it in Article 260 of the Constitution.

Section 4 of No. 3 of 2016 which it is proposed to amend—

4. This Act applies to—

(a) the national government;
(b) the private sector; and
(c) the informal sector.

Section 8 of No. 3 of 2016 which it is proposed to amend—

8. The functions of the Authority shall be to—

(a) advise on formulation of employment policies and strategies for national and county governments;
(b) advise both the national and county governments on any policy matter concerning employment;
(c) develop methodologies for employment measurement, management and promotion;
(d) conduct periodic surveys on labour market skills requirements and advice training institutions and job seekers appropriately to ensure that training and skills match the job market requirements;
(e) monitor implementation of employment policies and programmes;
(f) facilitate cooperation with the national government, the private sector, the informal sector and foreign governments and institutions to promote and increase access to employment;
(g) facilitate, continuous training and other activities of Kenyans to improve of their chances of employment and work skills;
(h) register persons seeking employment;
(i) maintain an integrated and up-to-date database of all persons seeking employment;
(j) facilitate the employment and placement of job seekers in formal and informal or any other form of employment, locally and internationally;

(k) circulate in a timely manner job vacancies advertised to job seekers throughout Kenya through appropriate means including use of social media, internet, and published materials;

(l) provide counseling to the unemployed and undertake activities to promote employment;

(m) facilitate the implementation of national policies on employment;

(n) take necessary steps to encourage equal opportunity employment practices for the benefit of the unemployed; and

(o) perform such other function as may be assigned to it by any other written law.

Section 17 of No. 3 of 2016 which it is proposed to amend—

17. (1) There shall be a Director-General of the Authority who shall be appointed competitively by the Board.

(2) A person shall be qualified to be appointed as a Director-General if that person—

(a) holds a degree from a university recognized in Kenya;

(b) meets the requirements of Chapter Six of the Constitution;

(c) has at least five years experience, two of which shall be in a management level; and

(d) has not attained the age of thirty-five years at the time of appointment.

(3) The Director-General shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment.

(4) The Director-General may be removed from office by the Board in accordance with the terms and conditions of service for—
(a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;
(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
(c) physical or mental incapacity to perform the functions of office;
(d) incompetence; or
(e) bankruptcy.

(5) Prior to removal under subsection (4), the Director-General shall be given—
(a) sufficient notice of the allegations made against him or her; and
(b) an opportunity to present a defence against the allegations.

(6) The Director-General shall—
(a) subject to the direction of the Board, be responsible for the day to day management of the Authority;
(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority;
(c) be the secretary of the Board.

Section 28 of No. 3 of 2016 which it is proposed to amend—

28. (1) Whenever a vacancy arises in a public or State office at the national government level, the concerned State office, public office or national entity shall convey details of the vacancy to the Authority.

(2) Whenever a vacancy occurs, the appointing office shall give priority to the job seekers registered by the Authority who possess the qualifications or skills sought.

(3) Where the qualifications or skills sought are not available in the Authority's database, the appointing office shall invite applications from qualified applicants through advertisements.
(4) The Authority shall, immediately upon receipt of the notification under subsection (1), circulate the vacancy information to all job seekers who have subscribed to and registered themselves with the Authority.

Section 30 of No. 3 of 2016 which it is proposed to amend—

30. (1) A youth registered under this Act may apply directly to a prospective employer.

(2) The Authority may forward applications or details of any qualified candidates to any prospective employer for their consideration and employment of the Kenyans registered under this Act.

(3) A State entity, public office or State office may request for data of qualified youth from the Authority for purposes of considering them for employment.

(4) It shall be the responsibility of the applicant to make and tender their application upon receipt of the notification of a vacancy under this Act.

Section 33 of No. 3 of 2016 which it is proposed to amend—

33. (1) The Authority shall, on its own motion, or using other state machineries, undertake due diligence on private companies seeking its services under this Act.

(2) The Authority shall not partner with any prospective employer where the Authority or any national security organ has, upon due diligence, established possible employment malpractices or violation of laws of Kenya.

(3) Notwithstanding subsection (1) and (2), the Authority shall take necessary measures to ensure that the youth are not denied access to employment unreasonably.

Section 37 of No. 3 of 2016 which it is proposed to amend—

37. (1) The State shall, through the Authority, encourage private and public institutions to employ Kenyans in all positions, including positions of leadership and management.

(2) The State shall come up with incentives to reward any private institution that employs Kenyans within six
months of completion of their certificate or undergraduate studies, and who do not possess more than five years work experience.

(3) The Government shall take affirmative action measures and actions designed to promote the employment of Kenyans in management and other levels of employment regardless of their years of experience.

Section 42 of No. 3 of 2016 which it is proposed to amend—

42. (1) At the end of each financial year or upon request by the Cabinet Secretary, the Authority shall submit an annual report on the discharge of its functions under this Act or any other written law.

(2) The report referred to under subsection (1) shall include—

(a) number of youth registered in the period under review;
(b) number of youth who have secured employment during the period under review;
(c) any impediment encountered in the discharge of the functions of the Authority;
(d) any policy matters that the Authority may require to be addressed by the Cabinet Secretary, national or county governments;
(e) any other matter pertinent to the discharge of its functions under this Act.

(3) An annual report referred to under this section shall be published and publicized.

Section 2 of No. 35 of 2016 which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

"access agreement or arrangement" means any agreement or arrangement entered into pursuant to section 128;

"Act" includes regulations or other forms of subsidiary legislation made hereunder;
"agent" means any person or unit appointed by the Board or Director-General to execute designated functions under this Act, or such other agent as may be appointed in accordance with section 17(1)(c);

"aircraft" means any propelled or remotely controlled airborne device capable of sustained movement through the atmosphere and includes helicopters and monitoring devices;

"artisanal fisheries" means small scale traditional fisheries that may be carried out for subsistence or commercial purposes in which the owner is directly involved in the day-to-day running of the enterprise and relatively small amounts of capital are used;

"artisanal fishing vessel" means any local fishing vessel, canoe or un-decked vessel with a length overall of not more than ten meters, which is motorised or not motorised by an outboard or inboard engine not exceeding forty horsepower, or powered by sails or paddles, but does not include decked or undecked semi-industrial fishing vessels or vessels used for recreational fishing;

"Authority" means the Fish Marketing Authority established by section 198;

"aquaculture" means the cultivation, propagation or farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants whether from eggs, spawn, spat, seed or other means or by rearing fish lawfully taken from the wild or lawfully imported into Kenya, or by other similar process;

"aquaculture establishment" means any area, enclosure, premise or structure set up or used on land or in water for the purposes of aquaculture, and includes any cage or raft or other system;

"aquaculture resources" means live fish and marine plants cultivated under aquaculture;

"authorized officer" includes a fisheries officer, a disciplines officer of the service and any person appointed by the Board under section 18;

"automatic location communicator" means a device approved by the Director which is placed on a fishing
vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing and such other activities of the vessel as may be required and includes a mobile transceiver unit;

"barter" means trade of fish and fish products by two or more persons without use of money;

"beach management unit" means an organization of fishers, fish traders, boat owners, fish processors and other beach stakeholders who traditionally depend on fisheries activities for their livelihoods;

"Board" means the Fisheries Service Board established by section 10;

"Board of Directors" means the Board of Directors of the Fish Marketing Authority established under section 201 "buy" includes—

(a) barter;

(b) purchase;

(c) attempt to barter;

(d) attempt to purchase;

(e) receive on account or consignment;

(f) receive in order to send, forward or deliver for sale;

(g) broker a sale;

(h) purchase or barter for future goods or for any consideration of value; and

(i) purchase or barter as an agent for another person;

"buyer" means any person who buys;

"Cabinet Secretary" means Cabinet Secretary for the time being responsible for fisheries;

"carrier vessel" means a vessel that carries fish that have been harvested by another vessel but does not engage in fishing itself;
"commercial aquaculture" includes any aquaculture operation resulting or intending or appearing to result in the sale or trade of any fish which is a product of such aquaculture operation, including semi-commercial aquaculture;

"Council" means the Kenya Fisheries Council established under section 6;

"crew member" means a worker who is part of a team working on a fishing vessel, towards a common function, whether paid or unpaid, other than the master, a pilot or shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

"dealing in fish" includes collecting, transporting, storing, transhipping, buying or selling fish or fish products for purposes of trade;

"designated Fishing Port" means fishing port established under section 50(1)(b);

"Director-General" means the person appointed as such under section 15;

"export" in relation to fish or fish products means to—
(a) send or take out of Kenya; or
(b) carry or transport anything out of the country;

"export facility" means any building or vessel or area in which fish and fish products is handled, prepared and stored for export purposes, including the surroundings under the control of the same management;

"farming" in relation to any fish means the breeding, cultivating and rearing of any such fish or the cultivating of any such vegetation, as the case may be;

"fish" means any marine or aquatic animal or plant, living or not and processed or not, and any of their parts and includes any shell, coral, reptile and marine mammal;

"fisher" means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;
"fish landing station" means a point on the shore of any waters or coastline of which the Director-General has by notice in the gazette designated as a point to land fish;

"fish processing" means any process that adds value to or preserves fish and includes the cutting up, dismembering, cleaning, sorting, icing, freezing, drying, chilling, salting, gutting, smoking, canning or any other action taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;

"fish processing establishment" means any place other than a licensed fishing vessel where fish are canned, dried, gutted, salted, iced, chilled, frozen, smoked or otherwise processed or stored but does not include a restaurant, eating place, hotel, or place where fish is prepared for immediate retail sale or consumption;

"fish product" means any product or part thereof (including oil) obtained by fish processing, and intended for use as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;

"fisheries officer" means the Director-General and any employee of the Service described in the first schedule;

"fishery" means—
(a) one or more stocks of fish, or parts thereof existing in a delineated area, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
(b) any fishing for such stocks;

"fishery resources" or "fisheries resources" means any fishery or stock, species or habitat of fish or part thereof;

"fishing" means—
(a) searching for or taking of fish;
(b) the attempted searching for or taking of fish;
(c) engaging in any other activity which can reasonably be expected to result in the locating or taking of fish;
(d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;

(e) any operation on Kenya fishery water or on the high seas in support of or in preparation for any activity described in paragraphs (a), (b), (c) or (d);

(f) use of an aircraft which is related to any activity described in paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member or the safety of a vessel, but does not include aquaculture or the transportation of fish;

"fishing gear" means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;

"fishing operations" includes fishing, supply of provisions to fishing vessels, and the handling and processing of fish up to the time it is first landed;

"fishing port" means a place on a lake shore or sea front where fishing vessels may resort for shelter, servicing, loading and off-loading of fish and fishing equipment;

"fishing related activity" means any activity in support of, or in preparation for, fishing including the—

(a) transhipping of fish to or from any vessel;

(b) landing, packaging, processing, handling or transporting of fish that have not been previously landed at port;

(c) provision of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;

(d) exporting fish or fish products from the country; and

(e) attempting or preparing to do any of the above;

"fishing vessel" means any vessel used for, equipped to be used for, or of a type that is normally used for, fishing or fishing related activities;
"flag State" in relation to a vessel that is not a Kenya fishing vessel means the State in which the vessel is registered, provided it is registered in only one State;

"foreign fishing vessel" means any fishing vessel other than a Kenya fishing vessel and includes any support vessel, notwithstanding that the vessel may be registered or licensed or required to be registered or licensed in Kenya pursuant to this Act or under the Merchant Shipping Act and Kenya Maritime Act;

"genetic resource" includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value;

"Government" means the Government of Kenya;

"high seas" means the waters beyond areas under the jurisdiction of any State including the territorial sea, exclusive economic zone or other zone of national jurisdiction;

"illegal fishing" includes—

(a) activities conducted by national or foreign vessels in waters under the jurisdiction of a state without the permission of that state, or in contravention of its laws and regulations;

(b) activities conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which those states are bound or relevant provisions of international law; and

(c) activities carried out in violation of national laws or international laws or international obligations, including those undertaken by co-operating states to a relevant regional fisheries management organization;

"import" means the bringing into Kenya or Kenya Fishery waters of any fish or fish product and aquatic flora from any place outside Kenya;
"industrial fishing vessel" means a decked fishing vessel with an overall length of twenty meters or greater and with an inboard engine;

"international agreement" includes any treaty, convention, or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements that Kenya is a party pursuant to the Treaty Making and Ratification Act, 2013, 1;

"international conservation and management measures" means measures which are notified in the Gazette in accordance with section 31;

"Kenya fishery waters" includes all maritime zones declared in the Maritime Zones Act, Cap. 250 internal waters, Lakes, riverine systems and any other waters including intertidal, inland and riverine over which Kenya exercises or claims jurisdiction;

"Kenya fishing vessel" means a fishing vessel which is registered under the Merchant Shipping Act, and does not hold any other registration, or is wholly owned and crewed by residents of Kenya or by other persons gazetted by the Service as persons who traditionally fish in Kenya fishery waters, and which meets such other conditions as may be prescribed;

"Kenya Marine and Fisheries Research Institute" means the institute established under the Science and Technology Act;

"landing" means bringing any fish or fish product to the harbour, port or beach from within or outside the Kenya fishery waters and offloading;

"licensing period" means the period of time during which any licence or authorization issued in accordance with this Act is valid;

"locally based foreign fishing vessel" means any foreign fishing vessel which—

(a) is based in and fully controlled or operated from Kenya;

(b) fishes exclusively in the Kenya fishery waters; and
(c) lands all of its catch or a substantial part of its catch in Kenya;

"master" means a person in command or in charge or apparently in command of the vessel, aircraft or a vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

"management" means an integrated process of information gathering, analysis, planning, consultation, decision making, allocation of resources, formulation and implementation of rules and regulations which govern fisheries activities in order to ensure the continued production of the resources and accomplishment of other fisheries objectives;

"operator" means any person responsible for the operations of, directs or controls a vessel, including the owner, charterer and master of the vessel;

"person" means any natural person or business enterprise and includes a corporation, partnership, cooperative, association and any foreign government, its subdivisions or agents;

"pollution" shall have the meaning assigned to it under the Environmental Management and Co-ordination Act, 1999;

"recreational fishing" means non-commercial fishing by an individual for leisure or relaxation;

“sell” includes—

(a) any method of disposition for consideration of anything which has value or which can be exchanged for cash or barter;

(b) disposition to an agent for sale on consignment;

(c) offering or attempting to dispose of for value or receiving or having in possession for disposal for value or displaying for disposal for value, or sending or delivering for disposal for value or causing or permitting to be sending or delivering for disposal for value, or causing or permitting to be disposed for value, offered or displayed for disposal for value; and
(d) disposition by way of raffle, lottery, or other game of chance under the Betting Control and Licensing Act;

and "sell" and "sold" have a corresponding meaning;

"semi-industrial fishing vessel" includes—

(a) a decked fishing vessel with an overall length of not less than ten meters and not more than fifty GRT and not powered by an inboard engine; and

(b) an undecked fishing vessel with an overall length of not less than ten meters and not more than twenty meters with less than fifty GRT and powered by engines of at least forty horse power;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means a vessel carrying out operations in connection with and support of a fishing vessel including transport, supply;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing or fishing related activities;

"Service" means the Kenya Fisheries Service established under section 7;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means any vessel carrying out operations in connection with and support of a fishing vessel including transport, supply or fishing;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing and fishing related activities;

"test fishing operation" means any fishing operation undertaken over a limited period of time with the approval
of the Director-General for the purpose of testing the feasibility of commercial fishing operations with a view to establishing fishery operations, and not for commercial purposes;

"territorial waters" shall have the meaning assigned to it under the Maritime Zones Act, Cap. 371 and includes the territorial sea;

"transshipment” means transferring fish or fish products to or from any vessel, whether or not the fish or fish products have first been taken on board the vessel from which the fish is passed;

“unregulated fishing” includes—
(a) activities conducted by vessels without nationality, or by those flying the flag state not party to that organization, or by a fishing identity in a manner that is not consistent with the conservation and management measure; and
(b) activities carried in areas or fish stocks in relation to which there are no applicable conservation or management measures in where the fishing activity is conducted;

"unreported fishing" includes activities which the relevant authority has not been notified;

"vehicle" means any car, truck, van, bus, trailer or other powered land conveyance;

"vessel monitoring system" includes a satellite based reporting system capable of monitoring the position and activities of fishing vessels.