

THE FINANCE ACT**No. 10 of 2010***Date of Assent: 21st December, 2010**Date of Commencement:**Section 77—24th December, 2010**All Other Sections: See Section 1*

An Act of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows –

PART I – PRELIMINARY

1. This Act may be cited as the Finance Act, 2010 and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

(a) sections 2, 3, 4, 5, 6, 7, 10, 11(a), 11(c) 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 42, 43, 44, 55, 56, 57, 63, 71, 73, 74, 75, 78, and 79, on the 11th June, 2010;

(b) sections 8, 9, 11 (b), 21, 33, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 72, 76, 80, 81, 82, 83, 84, 85, 86 and 87, on the 1st January, 2011.

PART II – CUSTOMS AND EXCISE

2. The Customs and Excise Act is amended in section 2 by inserting the following new definitions in proper alphabetical sequence-

Amendment of section 2 of Cap.472.

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“tax computerized system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to excise duty.

Repeal of section 91A of Cap.472.

3. The Customs and Excise Act is amended in section 91A(1) by deleting the words “two hundred and fifty millilitres” and substituting therefor the words “two hundred millilitres”.

Amendment of section 95 of Cap.472.

4. Section 95 of the Customs and Excise Act is amended by inserting the following new subsections immediately after subsection (3)-

(4) A licensee shall provide and maintain at his factory such metering devices, for the purpose of accounting for excise duty, as the Commissioner may, by notice in the Gazette, prescribe in accordance with subsection (5).

(5) A notice made under subsection (4) shall -

- (a) come into operation upon the expiry of six months from the date of publication in the Gazette; and
- (b) be made by the Commissioner only after consideration of the relevant international standards and practice.

Amendment of section 127C of Cap.472.

5. Section 127C of the Customs and Excise Act is amended by inserting the following new paragraph at the end of subsection (3) -

(d) the cost of any returnable package, box, bottle or container.

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6. Section 127E of the Customs and Excise Act is amended-

Amendment of section 127E of Cap.472.

(a) by inserting the following new subsection immediately after subsection (2)-

(2A) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

(b) by inserting the following new subsection immediately after subsection (3) -

(3A) Where a dispute arises regarding any decision of the Commissioner or other person authorised by him, or of the proper officer, the person aggrieved thereby may, within thirty days from the day he is notified of the decision, appeal to the Tribunal.

(c) by inserting the following new subsection immediately after subsection (4)-

(5) A person aggrieved by a decision of the Tribunal under this section may appeal to the High Court within fourteen days.

7. Section 139 of the Customs and Excise Act is amended in subsection (1)(f) by deleting subparagraphs (i), (ii) and (iii).

Amendment of section 139 of Cap.472.

8. The Customs and Excise Act is amended by inserting the following new section immediately after section 143-

Insertion of a new section 143A to Cap.472.

Exemption of
Excise duty on
water.

143A. Subject to the provisions of this Act, water, other than water which is bottled or otherwise packaged for sale, shall be exempt from excise duty.

Amendment of
section 149A of
Cap.472.

9. Section 149A of the Customs and Excise Act is amended by inserting the following new subsection immediately after subsection (2) —

(3) Where excise duty has been paid on spirits which have subsequently been used for manufacturing unexcisable goods, the excise duty previously paid shall, on application by the manufacturer, be refunded by the Commissioner:

Provided that this subsection shall apply only where the manufacturer is licensed by the Commissioner.

Insertion of
sections 159A-
159E in
Cap.472.

10. The Customs and Excise Act is amended by inserting the following new sections immediately after section 159-

Use of
information
technology.

159A.(1) Subject to such conditions as the Commissioner may prescribe, excise duty formalities or procedures under this Act may be carried out by use of information technology.

(2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify—

(a) the excise duty formalities and procedures which may be carried out by use of information technology; and

- (b) the persons authorised to carry out such formalities or procedures by use of information technology.

159B. (1) No person shall access, transmit to, or receive information from a tax computerized system unless the person is registered as a user of such system under this section.

Registration
of users.

(2) A person seeking registration under this section shall apply to the Commissioner.

(3) The Commissioner shall consider every application under subsection (2) and may, if satisfied that the applicant meets the prescribed requirements, register the applicant as a user of a tax computerized system.

159C. Where, at any time, the Commissioner is satisfied that a person who is registered as a user of a tax computerized system under section 159B-

Cancellation
of registration.

- (a) has failed to comply with any of the conditions imposed by the Commissioner under that section; or
- (b) has failed to comply with, or has acted in contravention of, any prescribed requirements; or

- (c) has been convicted of an offence under this Act relating to improper access to or interference with a tax computerized system,

the Commissioner may cancel the registration of the user.

Unauthorized
use of tax
computerized
system.

159D. (1) A person commits an offence if the person-

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized system; or
- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system for a purpose which is not authorized; or
- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction –

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

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

159E. A person commits an offence if the person knowingly –

Offences.

- (a) falsifies any record or information stored in any tax computerized system; or
- (b) damages or impairs any tax computerized system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information emanating from a tax computerized system is held or stored, otherwise than with the permission of the Commissioner,

and shall be liable, on conviction, to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

11. The Fifth Schedule to the Customs and Excise Act is amended –

Amendment of
5th Schedule to
Cap.472.

- (a) in the manner specified in Part I of the Schedule to this Act;
- (b) in the manner specified in Part II of the Schedule to this Act;
- (c) in the manner specified in Part III of the Schedule to this Act.

PART III – VALUE ADDED TAX

**Amendment of
section 12 of
Cap. 476.**

12. Section 12 of the Value Added Tax Act is amended by deleting subsection (1) and substituting therefor the following new subsection-

(1) Where -

(a) a registered person makes exempt supplies which subsequently become taxable; or

(b) on the date he becomes registered, a person-

(i) has in stock goods on which tax has been paid and which are intended for use in making taxable supplies; or

(ii) has constructed a building or civil works or has purchased assets for use in making taxable supplies,

he may, within three months, or such longer period as the Commissioner may, in any particular case allow, claim relief from any tax shown to have been paid on goods in stock, or on the construction of such buildings or civil works or the purchase of such assets:

Provided that this subsection shall apply where such buildings or civil works are constructed, or such goods or assets are purchased, within the period of twenty-four months immediately preceding registration or the exempt supplies becoming taxable.

13. The Value Added Tax Act is amended in Section 19A by deleting the proviso to subsection (2) and substituting therefor the following new proviso-

Amendment to section 19A of Cap. 476.

Provided that –

- (a) no tax shall be withheld from suppliers who are subject to turnover tax as provided under section 12C of the Income Tax Act, upon presentation of a valid turnover tax registration certificate;
- (b) the tax to be withheld by the Ministry responsible for roads, the Kenya Roads Board, the Kenya Rural Roads Authority, the Kenya Urban Roads Authority and the Kenya National Highways Authority shall be fifty percent of the tax payable on the purchase made by these institutions.

14. Section 28A of the Value Added Tax Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection-

Amendment of section 28A Cap. 476.

- (2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify-
 - (a) the tax formalities and procedures which may be carried out by use of information technology; and
 - (b) the persons authorised to carry out such formalities and procedures by use of information technology.

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Amendment of
section 28B of
Cap. 476.

15. Section 28B of the Value Added Tax Act is amended in subsection (1) by deleting the words "in writing".

Amendment of
section 32 of
Cap. 476.

16. The Value Added Tax Act is amended in section 32 by adding a new subsection immediately after subsection (4) as follows-

(5) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

Amendment of
the Second
Schedule to
Cap. 476.

17. The Second Schedule to the Value Added Tax Act is amended -

(a) in Part 1, by inserting in proper numerical sequence the following tariff numbers and their descriptions-

8504.31.00 Other transformers having a power handling capacity not exceeding 1KVA.

8504.32.00 Other transformers having a power handling capacity exceeding 1 KVA but not exceeding 16 KVA.

(b) in Part II, by inserting the following new subparagraphs-

- (vii) Electrical energy saving bulbs for lighting, also known as compact fluorescent bulbs.
- (viii) Aquaria pumps.
- (ix) Outboard engines of 10 HP.
- (ix) Single 2 volt cell units for 300 Ah and above.
- (xi) Inverters.

18. The Third Schedule to the Value Added Tax Act is amended by inserting the following new paragraph-

**Amendment of
Third Schedule
to Cap. 476.**

23. Landing and parking services provided for aircraft.

19. The Fifth Schedule to the Value Added Tax Act is amended in Part A by deleting paragraph 6.

**Amendment of
Fifth Schedule
to Cap.476.**

20. The Eighth Schedule to the Value Added Tax Act is amended in Part B by deleting item 4 and substituting therefor the following new item-

**Amendment of
Eighth
Schedule to
Cap.476.**

4. Passengers' Baggage and Personal Effects.

Goods imported by passengers arriving from places outside Kenya, subject to the limitations and conditions specified in the following paragraphs:

- (1) The goods shall be –

- (a) the property of and accompanying the passenger, except as provided in paragraph (7);
- (b) for the personal or household use of the passenger in Kenya; and
- (c) of such kinds and in such quantities as the proper officer may allow.

(2) Notwithstanding paragraph (1)(c), the following goods shall not be zero-rated under this item-

- (a) alcoholic beverages of all kinds, perfumes, spirits and tobacco and manufactures thereof, except as provided in paragraphs (6) and (7);
- (b) fabrics in the piece;
- (c) motor vehicles, except as provided in paragraphs (3) and (4);
- (d) any trade goods or goods for sale or disposal to other persons.

(3) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person on first arrival, or by a returning resident of Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya-

- (a) wearing apparel;
- (b) personal and household effects of any kind which were in his personal or household use in his former place of residence;
- (c) one motor vehicle, (excluding buses and minibuses of a seating capacity of more than 13 passengers and load-carrying vehicles of a load carrying capacity exceeding two tonnes) which the passenger has personally owned and used outside Kenya for at least twelve months (excluding the period of the voyage in the case of shipment):

Provided that –

- (i) the person has attained the age of eighteen years; and
- (ii) where the person has previously been granted zero-rating under this paragraph, any subsequent zero-rating shall not apply unless such person has used the motor vehicle so imported into Kenya for a period of not less than four years, and tax has been paid for the motor vehicle upon which zero rating had previously been granted.

(4) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person whom the proper officer is satisfied is making a temporary visit not exceeding three months to Kenya -

- (a) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
- (b) consumable provisions and non-alcoholic beverages, in such quantities and of such kinds as are, in the opinion of the proper officer, consistent with his visit;
- (c) goods imported by a returning resident, being an employee of an international organization the headquarters of which are in Kenya, and who has been recalled for consultations at the organization's headquarters.

(5) Subject to paragraphs (1) and (2), the following goods may be zero rated under this item when imported as baggage by a person who the proper officer is satisfied is a resident of Kenya returning from a visit outside Kenya and who is not changing residence in accordance with paragraphs (3) and (4)-

- (a) wearing apparel;
- (b) personal and household effects which have been in his personal or household use.

(6) Subject to paragraph (1) and subject to subparagraph (b) of this paragraph, tax shall not be levied on the following goods imported by, and in the possession of, a passenger-

- (a) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
- (b) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume;
- (c) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grammes in weight:

Provided that the tax free allowance under this paragraph shall be granted only to passengers who have attained the age of eighteen years.

(7) Subject to paragraphs (1) and (2) -

- (a) the zero rating granted in accordance with paragraphs (3), (4) and (5) may be allowed in respect of baggage imported within ninety days of the date of arrival of the passenger or such further period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow;
- (b) the tax free allowances granted in accordance with paragraph (6) shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage.

(8) Where any person who has been granted zero-rating under paragraphs (3) or (4) changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period, not exceeding sixty days from the date he changes such residence to a place outside Kenya, as the Commissioner may allow, otherwise tax shall become due and payable from the date of importation.

(9) Subject to paragraphs (1) and (2), goods up to the value of three hundred United States Dollars for each traveller in respect of goods, other than goods referred to in paragraph (8), shall be zero rated when imported by the traveller in his or her accompanied baggage, or upon his or her person and declared by him or her to an officer, provided that the person has been outside Kenya for a period in excess of twenty-four hours.

PART IV – INCOME TAX

21. Section 5 of the Income Tax Act is amended in subsection (4)-

**Amendment of
section 5 of
Cap.470.**

(a) by adding the following paragraph immediately after paragraph (f)-

(g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that —

(a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;

(b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.

- (b) by renumbering the existing paragraph (ff) as paragraph (h).

Amendment of
section 12A of
Cap.470.

22. Section 12A of the Income Tax Act is amended in subsection (1), by deleting the words “and in the case of a vehicle used for carriage of members of the public for hire or reward in respect of every driver and conductor thereof”

Amendment to
section 16 of
Cap.470

23. Section 16 of the Income Tax Act is amended-

- (a) in subsection (2), by inserting the words “or an amount of deemed interest” before the words “where the company” appearing immediately after paragraph j(ii);
- (b) deleting subsection (3) and inserting the following new subsection-

(3) For the purposes of subsection (2), the expressions-

“all loans” means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium”;

“deemed interest” means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loans have been provided free of interest.

24. Section 18 of the Income Tax Act is amended-**Amendment of
section 18 of
Cap.470.**

- (a) in subsection (3), by deleting the words “so arranged” and substituting therefor the word “such”;
- (b) in subsection (6), by adding the following paragraph immediately after paragraph (b)-
- (c) an individual, who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.

25. Section 35 of the Income Tax Act is amended-**Amendment of
section 35 of
Cap.470.**

- (a) in subsection (1), by adding the words “or aircraft engines” immediately after the word “aircraft” appearing at the end of paragraph (c);
- (b) in subsection (3), by deleting paragraph (h);
- (c) by adding the following new subsection immediately after subsection (6C) -
 - (6D) A person aggrieved by the imposition, by the Commissioner, of a penalty under this section may, by notice in writing to the Commissioner, object to the imposition within thirty days of the date of service of the notice of the imposition.

(6E) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

Amendment of section 37 of Cap.470.

26. Section 37 of the Income Tax Act is amended by adding the following new subsections immediately after subsection (5)-

(5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision.

(5B) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

Amendment of section 72D of Cap.470.

27. Section 72D of the Income Tax Act is amended by deleting the proviso and substituting therefor the following new proviso—

Provided that-

- (a) in the case where the instalment penalty under section 72C applies, the penalty under this section shall not apply except to the extent that any such instalment penalty has not been paid by the due date for self-assessment of tax under section 52B;
- (b) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.

28. Section 94 of the Income Tax Act is amended-

Amendment of
section 94 of
Cap.470.

- (a) in subsection (1), by deleting the words “including the penalty” and inserting the words “of tax”;
- (b) by deleting the proviso to subsection (1) and substituting therefor the following new proviso-

Provided that—

- (a) the interest chargeable under this subsection shall not exceed one hundred per centum of the tax owing; and
- (b) the penalty referred to in this subsection or imposed under any other section of this Act shall not attract any interest.

29. Section 123 of the Income Tax Act is amended by adding the following new section immediately after section 123A -

Insertion of
new section
123B in Cap
470.

Commissioner
to refrain from
assessing tax in
some cases.

123B. Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31st December, 2010, where-

- (a) that income has been declared for the year 2010 by a citizen of Kenya living and earning taxable income outside Kenya;
- (b) the returns and accounts for the year 2010 are submitted on or before the 30th June, 2011:

Provided that this section shall not apply in respect of any tax where the person who should have paid the tax-

- (i) has been assessed in respect of the tax or any matter relating to the tax; or
- (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

Amendment of section 127A of Cap.470.

30. Section 127A of the Income Tax Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection-

(2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify-

- (a) the income tax formalities and procedures which may be carried out by use of information technology; and
- (b) the persons authorised to carry out such formalities or procedures by use of information technology.

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31. Section 127B of the Income Tax Act is amended in subsection (1) by deleting the words “in writing”.

Amendment of section 127B of Cap.470.

32. The First Schedule to the Income Tax Act is amended by deleting paragraph 51 and substituting therefor the following new paragraph—

Amendment of the First Schedule to Cap.470.

51. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

33. The Second Schedule to the Income Tax Act is amended –

Amendment of the Second Schedule to Cap.470.

(a) in Part I, by deleting subparagraph(1)(ee) of paragraph 1 and substituting therefor the following new subparagraph –

(ee) in a case referred to in paragraph 5(1)(f) or 5(1)(ff) for any year of income commencing on or after 1st January 2010, where roads, power, water, sewers and other social infrastructure have been provided by the person incurring the capital expenditure, twenty-five percent.

(b) in Part IV-

(i) by adding the following new subparagraph immediately after subparagraph (b) of the proviso to paragraph 22(1)-

(c) where in any year of income commencing on or after 1st January, 2011, the owner or tenant of agricultural land incurs capital expenditure on the construction of farmworks, there shall be made, in computing his gains or profits for that year of income, a deduction equal to a hundred percent of that expenditure.

(ii) by deleting paragraph 31A and substituting therefor the following new paragraph –

31A. Where a person incurs capital expenditure on the purchase of machinery or on the construction of roads, bridges or similar infrastructure under a concessionairing arrangement, the deduction shall be spread and claimed in equal proportion over the period of the concession:

Provided that the period of concession shall be deemed to commence –

- (a) in the case of machinery, in the year in which the machinery is first put into use;
- (b) in the case of a road, bridge or similar infrastructure, in the year in which it is first put into use after completion.

**Amendment of
the Third
Schedule of
Cap.470.**

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

- (a) in paragraph 5, by deleting subparagraph (i);

(b) in paragraph 8 –

- (i) by inserting the words “prime movers, trailers” immediately after the word “trucks” appearing in subparagraph (a); and
- (ii) by adding the following proviso immediately after subparagraph (a)-

Provided that advance tax shall not be imposed on tractors or trailers used for agricultural purposes.

(iii) by deleting subparagraph (c).

35. The Ninth Schedule to the Income Tax Act is amended in Part III by deleting the words “within thirty days to the Commissioner” appearing in paragraph 11(1) and substituting therefor the words “to the Commissioner on or before the twentieth day of the month following the month in which the deduction is made”.

Amendment of Ninth Schedule to Cap.470.

PART V – MISCELLANEOUS

36. Section 75 of the Government Lands Act is amended by inserting the following proviso immediately at the end of subsection (1)-

Amendment of section 75 of Cap. 280.

Provided that the interest chargeable under this subsection shall not exceed one hundred per centum of the principal rent outstanding.

37. The Government Lands Act is amended by inserting a new section 75A immediately after 75 as follows-

Insertion of section 75A in Cap.280.

Commissioner
to refrain from
assessing
interest.

75A. Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering late payment interest outstanding upto and including the 30th June, 2010.

**Amendment of
section 6 of
Cap.403.**

38. Section 6 of the Traffic Act is amended—

(a) in subsection (5), by deleting the word “book” wherever it occurs and substituting therefor the word “certificate”;

(b) by inserting the following new subsection immediately after subsection (5)—

(5A) Where a vehicle ceases to be used on the road, the owner shall forthwith return the registration certificate issued under this Act to the Registrar of Motor Vehicles for cancellation.

(c) in subsection (6), by deleting the word “book” wherever it occurs and substituting therefor the word “certificate”;

(d) by deleting the word “book” appearing in subsection (7) and substituting therefor the word “certificate”.

**Amendment of
section 9 of
Cap.403.**

39. Section 9 of the Traffic Act is amended —

(a) in subsection (4), by deleting the word “book” and substituting therefor the word “certificate”;

(b) in subsection (5), by deleting the word “book” wherever it occurs and substituting therefor the word “certificate”;

(c) in subsection (6), by deleting the word “book” wherever it occurs and substituting therefor the word “certificate”.

40. Section 12 of the Traffic Act is amended by inserting the following new subsection –

Amendment of section 12 of Cap. 403.

(1A) Where a motor vehicle ceases to be used on the road, the owner shall forthwith surrender the identification plates to the Registrar of Motor Vehicles for cancellation.

41. Section 13 of the Traffic Act is amended by deleting the word “book” and substituting therefor the word “certificate”.

Amendment of section 13 of Cap.403.

42. Section 20 of the Stamp Duty Act is amended in subsection (2)–

Amendment of section 20 Cap.480.

(a) by deleting the words “five shillings” and substituting therefor the words “one shilling”;

(b) by deleting the proviso and substituting therefor the following new proviso–

Provided that –

(a) the penalty chargeable under this subsection shall not exceed one hundred per centum of the principal duty outstanding; and

- (b) the collector may remit the penalty under this section up to a maximum of one million five hundred shillings, but shall not remit any penalty exceeding that amount without prior approval from the Minister.

Amendment of section 102 of Cap.480.

43. Section 102 of the Stamp Duty Act is amended in paragraph (c) by deleting the word “ninety” and substituting therefor the words “one hundred and eighty”.

Amendment of Schedule to Cap. 480.

44. The Schedule to the Stamp Duty Act is amended-

- (a) in item 19, by deleting the expression “Sh.4” appearing in the first and the second columns and substituting therefor the expression “Sh.20”;
- (b) in item 24(1), by deleting the expression “Sh.2” appearing in the second column and substituting therefor the expression “Sh.1”;

Amendment of section 2 of Cap.485A.

45. The Capital Markets Act is amended in section 2-

- (a) by deleting the definition of the word “member”;
- (b) by inserting the following definition in proper alphabetical sequence-

“trading participant” means a licensee of the Authority with rights to trade at an approved securities exchange.

Amendment of section 13 of Cap.485A

46. Section 13 of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (2) -

(3) Notwithstanding subsection (2), the Authority may share information with other regulatory authorities.

47. Section 20 of the Capital Markets Act is amended—

Amendment of section 20 of Cap. 485A.

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

(2) The Authority may, by notice in writing, approve a person as a securities exchange if it is satisfied—

(a) that the applicant is a limited liability company whose liability is limited by shares, or as may be prescribed by the Authority;

(b) that the applicant's board of directors is constituted in a manner prescribed by the Authority.

(b) by deleting subsection (3).

48. Section 22 of the Capital Markets Act is amended by deleting the word “member” wherever it occurs and substituting therefor the words “trading participant”.

Amendment of section 22 of Cap. 485A.

49. Section 29 of the Capital Markets Act is amended—

Amendment to section 29 of Cap. 485A.

(a) in subsection (1), by deleting the words “of which it is a member” appearing in paragraph (d) and substituting therefor the words “in which it is a trading participant”;

(b) in subsection (2), by deleting the words “member of” and substituting therefor the words “trading participant in”;

(c) in subsection (3), by deleting the words “member of” and substituting therefor the words “trading participant”.

Amendment of section 31 of Cap. 485A.

50. Section 31 of the Capital Markets Act is amended in subsection (1) by deleting the words “of which it is a member” and substituting therefor the words “in which he is a trading participant”.

Amendment to section 3A of Cap. 487.

51. Section 3A of the Insurance Act is amended –

(a) by inserting the following new paragraphs immediately after paragraph (f)–

(g) issue supervisory guidelines and prudential standards from time to time, for the better administration of the insurance business of persons licensed under this Act;

(h) share information with other regulatory authorities and to carry out any other related activities in furtherance of its supervisory role;

(b) by renumbering the existing paragraph (g) as paragraph (i).

Amendment to section 23 of Cap. 487.

52. Section 23 of the Insurance Act is amended –

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(a) in subsection (4A) –

(i) by deleting the word “listed” appearing in paragraph (a) and substituting therefor the expression “paid-up”;

(ii) by adding the following new subparagraph to the proviso–

(v) a company listed in a stock exchange.

(b) in subsection (4B), by deleting the word “listed” appearing in subparagraph (i) and substituting therefor the expression “paid-up”;

(c) in subsection (4C), by deleting the expression “2010” and substituting therefor the expression “2011”.

(d) by inserting the following new subsection immediately after subsection (4C) -

(4D) For the purposes of subsection (4A), indirect control or beneficial entitlement to the paid up share capital or voting rights of an insurer, means control or entitlement–

(a) in the case of a company or body corporate, through –

- (i) a holding company or its subsidiary;
 - (ii) a subsidiary or its holding company;
 - (iii) a holding company or its subsidiary;
 - (iv) nominees; or
- (b) in the case of an individual, through –
- (i) any member of his family;
 - (ii) a company or other body corporate controlled directly or indirectly by him, whether alone or with his associates;
 - (iii) any associate of his associates,

and a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild or adopted child of the person concerned, and in the case of an adopted child his adoptive parents.

Amendment of
section 42 of
Cap.487.

53. Section 42 of the Insurance Act is amended in subsection (1) by deleting paragraph (d).

54. Section 61 of the Insurance Act is amended –

**Amendment of
section 61 of
Cap.487.**

(a) by inserting the following new subsection immediately after subsection (4) –

(4A) The annual accounts and statement of an insurer shall be in such form as the Authority may, from time to time, require and subject to such conditions as the Commissioner may prescribe, may be submitted through the use of information technology.

(b) by deleting subsection (5) and substituting thereof the following new subsection –

(5) The penalty under subsection (4) shall be paid to the Policy Holders Compensation Fund in such manner as may, from time to time, be prescribed by the Authority.

55. Section 67D of the Insurance Act is amended in subsection (2) by deleting the words “by a crossed banker’s cheque made in favour of the Policyholders’ Compensation Fund” and substituting therefor the words “to the Policyholders’ Compensation Fund in such manner as may, from time to time, be prescribed by the Authority”.

**Amendment of
section 67D of
Cap. 487**

56. Section 71 of the Insurance Act is amended in subsection (1) by deleting the word “twenty” appearing in the proviso and substituting therefor the words “one hundred”.

**Amendment of
section 71 of
Cap. 487.**

No. 10

Amendment of
section 76A of
Cap.487.

57. Section 76A of the Insurance Act is amended-

- (a) in paragraph (a) by deleting the words “temporary policy” and substituting therefor the words “temporary cover”;
- (b) in paragraph (b) by deleting the words “new policy” and substituting therefor the words “annual policy”.

Amendment of
section 150A of
Cap. 487.

58. Section 150A of the Insurance Act is amended by deleting subsection (1) and substituting therefor the following new subsection –

- (1) Every person engaged in the business of placing medical insurance business with an insurer in expectation of payment by way of a commission, fee, or other remuneration shall apply to the Authority for registration as a medical insurance provider under this Act.

Amendment of
section 153 of
Cap. 487.

59. Section 153 of the Insurance Act is amended in subsection (5) by deleting the word “Kenya” wherever it occurs and substituting therefor the words “the East African Community”.

Amendment of
section 156 of
Cap.487.

60. Section 156 of the Insurance Act is amended by deleting subsection (7).

Amendment of
section 179 of
Cap. 487.

61. Section 179 of the Insurance Act is amended –

- (a) by inserting the following new subsections immediately after subsection (2)-

(2A) The functions of the Board shall be to-

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- (a) provide compensation to the policyholders of an insolvent insurer;
- (b) monitor, in consultation with the Commissioner where necessary, the risk profile of any insurer;
- (c) advise the Minister on the national policy to be followed with regard to matters relating to compensation of policyholders and to implement all government policies relating thereto; and
- (d) perform such other functions as may be conferred on it by this Act or by any other written law.

(2B). The Board shall have all the powers necessary for the proper performance of its functions under this Act, and without prejudice to the generality of the foregoing, shall have power to –

- (a) control, supervise and administer the assets and liabilities of the Fund in such manner and for such purposes as best promote the interests of policyholders;
- (b) employ such persons and engage the services of such consultants as may be necessary, on such terms and conditions for the proper and efficient exercise of its functions;

- (c) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate in furtherance of the purposes for which the Fund is established;
 - (d) invest any of its surplus funds in securities which for the time being trustees may by law invest in, or in any other securities which the Treasury may, from time to time, approve;
 - (e) receive contributions paid by insurers and policyholders, grants provided by Parliament, gifts, donations or endowments on behalf of the Fund and make legitimate disbursements therefrom;
 - (f) subject to the provisions of this Act, regulate its own procedure.
- (b) in subsection (9), by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs—
- (a) the Board shall hold the directors of the insurer who has defaulted in remitting a statutory contribution to be severally and jointly liable for the payment of the outstanding contribution together with the applicable interest; and

- (b) the liability of the directors shall commence on the expiry of ninety days from the due date of the outstanding statutory contribution.

62. The Insurance Act is amended by inserting the following new section immediately after section 179 –

Insertion of section 179A in Cap. 487.

Protection from personal liability.

179A. No matter or thing done by a member of the Board, the secretary to the Board, or an officer, employee or agent of the Board shall, if the matter or thing is done *bonafide* for executing the functions, powers, or duties of the Board under this Act, render the member, secretary, officer, employee or agent, or any person acting on their direction personally liable to any action, claim, or demand whatsoever.

63. Section 2 of the Banking Act is amended –

Amendment of section 2 of Cap. 488.

- (a) in subsection (1) by deleting the definition of “mortgage finance company” and substituting therefor the following new definition-

“mortgage finance company” means a company (other than a financial institution) which accepts from the members of the public, money-

(a) on deposit repayable on demand or at the expiry of a fixed period or after notice; or

(b) on current account and payment on and acceptance of cheques,

and is established for the purpose of employing such money in accordance with section 15;

(b) by inserting the following definition in proper alphabetical sequence –

“significantly undercapitalized” in relation to an institution, means that the institution holds less than fifty percent of the capital requirements prescribed under section 18;

“undercapitalized bank” means an institution that does not fully comply with the capital requirements prescribed in section 18.

Amendment of section 8 of Cap. 488.

64. Section 8 of the Banking Act is amended by inserting the following new subsection immediately after subsection (3)-

(4) The Central Bank shall prescribe the manner in which approvals under this section shall be granted.

Amendment of section 14 of Cap. 488.

65. Section 14 of the Banking Act is amended-

- (a) by deleting the words “twenty-five” appearing in subsection (1) and substituting therefor the word “forty”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection-

(2) The Central Bank may authorise an institution to exceed the percentage specified in subsection (1) up to a maximum of seventy per cent.

66. The Banking Act is amended by repealing section 33A and substituting therefor the following new section-

Replacement of section 33A of Cap. 488.

Powers upon audit or inspection report.

33A. Where an auditor's report under section 24(4) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to the provisions of this Act, or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank may-

- (a) restrict, suspend or prohibit the payment of dividends by the institution;
- (b) prohibit the conversion of any profits of the institution into capital;
- (c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;

- (d) require the institution to reconstitute its board of directors in accordance with the criteria set out in the First Schedule;
- (e) withhold branch or other corporate approval with respect to such institution;
- (f) undertake more frequent inspections of that institution;
- (g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to the capital adequacy prescribed in section 18, or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;
- (h) prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;
- (i) at the expense of the institution, appoint a person suitably qualified and competent, in the opinion of the Central Bank, to advise and assist the institution in designing and implementing a capital restoration plan or other corrective action plan under paragraph (g), and the person appointed shall regularly report to the Central Bank on the progress of the plan;

- (j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;
- (k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or
- (l) order the institution to do any or take such other actions as it may deem necessary to rectify a capital deficiency or other weaknesses.

67. Section 34 of the Banking Act is amended-

Amendment to
section 34 of
Cap. 488.

- (a) in subsection (1) by inserting the following paragraphs immediately after paragraph (d)-
 - (e) if the institution is significantly undercapitalized; or
 - (f) if the institution fails -
 - (i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed under section 33A; or
 - (ii) to add more capital, and it fails, neglects or refuses to comply with an order or to implement a plan of correction.
- (b) by deleting subsection (2) and substituting therefor the following new subsection-

(2) In any case to which this section applies, the Central Bank may-

- (a) enter into an agreement with the board of directors of an institution requiring the institution to rectify its deficiencies within three months:

Provided that in the case of reckless or fraudulent conduct, the Central Bank shall have discretion to enter an agreement based on its judgment as to the efficacy of such an approach.

- (b) appoint a competent person familiar with the business of the institution (in this Act referred to as a "Manager") to assume the management, control and conduct of the affairs and business of an institution and to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;
- (c) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder, or to any deterioration in the financial stability of the institution, or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;

- (d) appoint a competent person familiar with the business of the institution to its board of directors to hold office as a director, who shall not be capable of being removed from office without the approval of the Central Bank;
- (e) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person;
- (f) restrict the institution from engaging in new foreign exchange business;
- (g) prohibit the institution from engaging in new off-balance sheet transactions; and
- (h) prohibit the institution from engaging any new agents or direct the institution to terminate any agency arrangement.

68. Section 35A of the Banking Act is amended -

- (a) in the proviso, by inserting the words "Fund" immediately before the word "costs";
- (b) by inserting the following new subsection immediately after subsection (1)-

Amendment of
section 35A of
Cap. 488.

(2) Upon completion of the winding up of an institution, the liquidator may receive payment from debtors and other entities, on behalf of the wound up institution and the amount received shall be paid into the Fund.

(c) by renumbering the existing subsection (2) as subsection (3).

Insertion of section 41A in Cap. 488.

69. The Banking Act is amended by inserting the following new section immediately after section 41-

Administration of assets.

41A. (1) The Board shall hold, manage and dispose of all the assets of an institution remaining unsold at the time of winding up.

(2) The Registrar of Companies and the Registrar of Titles, and any officer or person in charge of a deeds registry, or any other relevant office, shall upon production of any relevant deed, bond, share, stock, debenture or other document, make such endorsement and effect such alterations as may be necessary to record the transfer of the relevant property or asset, as the case may be.

Amendment of section 54 of Cap. 488.

70. Section 54 of the Banking Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection-

(2). Notwithstanding the provisions of subsection (1), where any of the bodies referred to in that subsection is contracted by an institution as an agent to provide banking services on behalf of the institution, this Act shall apply to such body to the extent of the services contracted.

71. Section 2 of the Central Bank of Kenya Act is amended in the definition of the expression “payment for current transaction” by deleting paragraph (b) and substituting therefor the following new paragraph-

Amendment of section 2 of the Cap. 491.

(b) a payment due as interest or as net income or return from other investment.

72. Section 33F of the Central Bank Act is amended by inserting the following new subsections immediately after subsection (5)-

Amendment of section 33F of Cap.491.

(6) The Central Bank may publish in whole or in part, at such times and in such manner as it deems fit, any information furnished to it under this Part:

Provided that the information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent, in writing, of that person has first been given.

(7) Except as provided in the Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act.

(8) Notwithstanding the provisions of this section, the Central Bank may disclose any information referred to in subsection (7) to any monetary authority, financial regulatory authority, fiscal or tax agency, or fraud investigation agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting authority, financial regulatory authority, fiscal or tax agency or fraud investigation agency:

Provided that the sharing of information with any authority or agency outside Kenya shall be on reciprocal basis.

Amendment of section 36 of Cap. 491.

73. Section 36 of the Central Bank of Kenya Act is amended in subsection (3)-

- (a) by inserting the words “or return” immediately after the words “rates of interest”;
- (b) by inserting the words “of interest or return” immediately after the words “different rates”.

Amendment of section 38 of Cap.491.

74. Section 38 of the Central Bank of Kenya Act is amended-

- (a) in subsection (4) by deleting the word “interest” appearing immediately after the word “penalty”;
- (b) in subsection (5) by deleting the words “interest at such rates and” and substituting therefor the words “a return”.

Amendment of section 45 of Cap.491

75. Section 45 of the Central Bank of Kenya Act is amended-

- (a) in paragraph (c) by deleting the word “interest” and substituting therefor the word “return”;
- (b) in paragraph (f) by inserting the words “or return” immediately after the words “or interest” wherever they occur.

Amended
11/02/10
Insertion of section 44A in No.3 of 1997.

76. The Retirement Benefits Act, 1997 is amended by inserting a new section 44A immediately after 44 as follows:-

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Sharing
information

44A. The Authority may share information with other regulatory authorities.

77. The Copyright Act is amended by deleting section 42 and substituting therefor the following -

Amendment to
section 42 of
No. 12 of 2001.

42.(1) An inspector of the Board, duly authorized in writing by the Board and wearing a visible badge of office may, following an inspection under this Act, notify a police officer of any offence suspended to have been committed under this Act and request such police officer to arrest the person suspected of having committed the offence.

(2) A police officer who is notified of an offence suspected to have been committed under subsection (1) may, upon obtaining a warrant of arrest, effect an arrest, and may thereupon confiscate any offending material necessary for evidence before a Court.

78. The Anti-Corruption and Economic Crimes Act, 2003 is amended by inserting the following new section immediately after section 56B -

*Amend
& insert*
Insertion of
section 56A in
No.3 of 2003

Recovery of
funds and
other assets.

56C. (1) Any funds recovered by the Commission shall be paid into the Consolidated Fund.

(2) Notwithstanding any provision in this Act or any other written law, any asset or property, whether movable or immovable, recovered either in the course of, or upon conclusion of investigations, or upon commencement of court action or proceedings, whether such proceedings are of a civil or criminal nature or upon conclusion of such proceedings, shall be surrendered to the Permanent Secretary to the Treasury.

Insertion of
section 13A in
No. 5 of 2004.

79. The Government Financial Management Act, is amended by inserting a new section immediately after section 13 as follows-

Payment of
surplus into the
Consolidated
Fund.

13A. (1) A regulatory authority established by an Act of Parliament shall remit into the Consolidated Fund, ninety per centum of its surplus funds reported in the audited financial statements after the end of each financial year.

(2) A regulatory authority to which this section applies shall be exempt from income tax.

Amendment of
section 39 of
No. 3 2005

80. Section 39 of the Public Procurement and Disposal Act is amended –

- (a) in subsection (3), by adding the words “by the Authority” at the end of paragraph (c);
- (b) in paragraph (b) of subsection (8), by deleting the word “may” wherever it occurs and substituting therefor the word “shall”.

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81. Section 115 of the Public Procurement and Disposal Act, 2005 is amended by inserting the following new subsection immediately after subsection (2)-

Amendment of
section 115 of
No.3 of 2005.

(2A) Debarment under this section may be imposed by the Director-General on the recommendation of a law-enforcement agency with an investigative mandate.

82. Section 2 of The Microfinance Act, 2006 is amended-

Amendment of
section 2 of No.
19 of 2006.

(a) by inserting the following new definitions in their proper alphabetical sequence-

“agency” means -

- (a) an institution’s place of business operated within premises or structure owned or occupied by a third party by means of an agreement between the institution and the third party in the provision of deposit taking microfinance business, or
- (b) a third party or entity contracted by an institution and approved by the Central Bank to provide deposit-taking business on behalf of the institution in such manner as may be prescribed by the Central Bank.

“branch” means an institution’s place of business, used for the provision of deposit-taking microfinance business in Kenya and directly responsible to the head office of the institution for the conduct of business, and which is situated at a permanent location and address;

- (b) by deleting the definition of “place of business” and substituting therefor the following new definition—

“place of business” means any premises, other than the head office, including a branch, sub-branch, satellite branch, agency, outlet, mobile unit, marketing office or such other premises as may be approved by the Central Bank, at which an institution transacts deposit-taking microfinance business and which is open to the public.

Amendment of
section 4 of No.
19 of 2006.

83. Section 4 of The Microfinance Act, 2006 is amended-

- (a) by inserting the following new subsections immediately after subsection (1)-

(2) The provisions of subsection (1) shall not apply to a duly approved agency conducting deposit-taking business on behalf of an institution.

(3) Where an agency conducts deposit-taking business on behalf of an institution in accordance with this Act, the institution shall be liable for the acts of the agency in so far as such acts relate to that business.

- (b) by renumbering the existing subsection (2) as subsection(4).

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No. 10

84. Section 13 of the Microfinance, 2006 is amended-

Amendment of
section 13 of
No. 19 of 2006.

- (a) in subsection (1), by inserting the words “branch or” before the words “ place of business” wherever they occur;
- (b) by inserting the following new subsection immediately after subsection (2)-

(3) The Central Bank may make regulations to prescribe the manner in which approvals shall be granted under this section.

85. Section 33 of the Microfinance Act, 2006 is amended by inserting the words “and its agencies” immediately after the word “institution” wherever it occurs.

Amendment of
section 35 of
No. 19 of 2006.

86. Section 35 of the Microfinance Act, 2006 is amended-

Amendment of
section 35 of
No. 19 of 2006.

- (a) in subsection (1), by inserting the words “and its agencies” immediately after the word “institution”;
- (b) in subsection (2), by inserting the words “or agency” immediately after the words “institution concerned”.

87. Section 37 of the Microfinance Act, 2006 is amended by in subsection (3) by inserting the following new paragraphs immediately after paragraph (f)-

Amendment of
to section 37 of
No. 19 of 2006.

(g) impose any restriction or condition it may consider necessary on any arrangement between the and its agencies; or

(h) direct the institution to terminate any agency arrangement.

SCHEDULE

Amendment of the Fifth Schedule to the Customs and Excise Act, Cap 472.

FIFTH SCHEDULE**PART I**

1. Delete the following tariff numbers, descriptions and rates of excise duty thereof –

| <i>Tariff No.</i> | <i>Goods Description.</i> | <i>Rate of Duty</i> |
|-------------------|---------------------------|---------------------|
| 2203.00.10 | Stout and porter | Sh.54 per litre |
| 2203.00.90 | Other beer made from malt | Sh.54 per litre |

2. Insert the following tariff numbers, descriptions and rates of excise duty thereof –

| <i>Tariff No.</i> | <i>Goods Description.</i> | <i>Rate of Duty</i> |
|-------------------|--|-------------------------|
| 2203.00.10 | Stout and porter | Sh.65 per litre |
| 2203.00.90 | Other beer made from malt | Sh.65 per litre |
| 2206.00.10 | Cider | Sh.55 per litre |
| 2206.00.20 | Opaque beer | Sh.55 per litre |
| 2206.00.90 | Other fermented beverages | Sh.55 per litre |
| 2207.20.00 | Ethyl alcohol and other spirits, denatured, of any strength | Sh.120 per litre or 35% |

PART II

Delete the existing Part II and substitute therefor the following new part

Excise duty in respect of cigarettes shall be as shown hereunder –

| <i>Category</i> | <i>Description</i> | <i>Rate of duty</i> |
|-----------------|---|---------------------|
| A | Plain cigarettes or cigarettes with RSP of up to Shs.2,500 per mille. | Shs. 700 per mille |
| B | Soft cup cigarettes with RSP of Shs.2,501 to Shs. 3,500 per mille. | Shs.1,000 per mille |
| C | Soft cup cigarettes with RSP of Shs.3,501 to 4, 500 per mille. | Shs.1,500 per mille |
| D | Hinge lid cigarettes or cigarettes with RSP of more than Shs.4,500 per mille. | Shs.2,500 per mille |

(RSP means Retail Selling Price)

PART III

Delete item (1) of Part III.