

THE FINANCE BILL, 2009

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

ENACTED by the Parliament of Kenya, as follows –

PART I – PRELIMINARY

**Short title and
commencement.**

1. This Act may be cited as the Finance Act, 2009 and shall come into operation, or be deemed to have come into operation, as follows-

(a) sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22(a), 22(c), 22(d), 23, 24, 25, 26, 27, 28, 29, 30(a) and 65, on the 12th June 2009;

(b) section 66 on the 1st July 2009;

(c) sections 3, 17, 20, 22(b), 30(b), 30(c), 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, and 73, on the 1st January, 2010.

PART II – CUSTOMS AND EXCISE

**Amendment of
section 90 of
Cap.472.**

2. Section 90 of the Customs and Excise Act is amended -

(a) in subsection (2), by deleting the words “industrial use” appearing in paragraph (b) and substituting therefor the words “packing and packaging”;

(b) by inserting a new subsection immediately after subsection (2) as follows -

(2A). The licences required under subsection (2) shall be valid for a renewable period of one year.

Amendment of section 91A of Cap.472.

3. Section 91A of the Customs and Excise Act is amended in subsection (1) by deleting the words “two hundred millilitres or less” and substituting therefor the words “less than two hundred and fifty millilitres”.

Repeal of section 126A of Cap. 472.

4. The Customs and Excise Act is amended by repealing section 126A.

Amendment of Fourth Schedule to Cap. 472.

5. The Fourth Schedule to the Customs and Excise Act is amended by renumbering the existing Fourth Schedule as Part I and inserting a new Part II as follows-

PART II

“Part I shall not apply to exports to Export Processing Zones”.

Amendment of Fifth Schedule to Cap. 472.

6. The Fifth Schedule to the Customs and Excise Act is amended in the manner specified in the First Schedule to this Act.

PART III – VALUE ADDED TAX

Amendment of section 2 of Cap. 476.

7. Section 2 of the Value Added Tax Act is amended by inserting the following new definition in proper alphabetical sequence -

“transit goods” means goods imported from a foreign place, through the territory of Kenya, to a foreign destination.

Amendment of section 9 of Cap. 476.

8. Section 9 of the Value Added Tax Act is amended in subsection (1) by deleting subparagraph (c)(ii) and substituting therefor the following new subparagraph -

(ii) the amount of duty of customs, if any, paid on those goods.

Amendment of section 12 of Cap. 476.

9. Section 12 of the Value Added Tax Act is amended in subsection (1) by deleting the words “thirty days” and substituting therefor the words “six months”.

Amendment of section 19A of Cap. 476.

10. Section 19A of the Value Added Tax Act is amended by inserting a new subsection immediately after subsection (2) as follows –

(2A) A person withholding tax under subsection (2) shall issue a withholding tax certificate to the supplier at the time of making the payment for the supplies.

Amendment of section 23 of Cap.476

11. Section 23 of the Value Added Tax Act is amended in subsection (3) by deleting paragraph (b) and substituting therefor the following new subsection -

(b) taxable goods for emergency relief purposes for use in specific areas and within a specified period, imported or purchased locally by the Government or its approved agent, a non-governmental organization or a relief agency authorized by the Minister responsible for disaster management, where -

(i) the goods are for use in areas where a natural disaster or calamity has occurred in Kenya; or

(ii) the goods are intended for use in officially recognized refugee camps in Kenya;

(iii) the goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes; and,

(iv) in the case of a natural disaster or calamity, the importation or purchase locally is made within six months or such further period, not exceeding twelve months, as the Commissioner may permit in each case:

Provided that the goods imported or purchased under this paragraph shall be of such quantities and subject to such limitations as the Commissioner may impose.

**Amendment of
the Second
Schedule to
Cap. 476.**

12. The Second Schedule to the Value Added Tax Act is amended by inserting the following tariff number and description in proper numerical order -

<i>Tariff No.</i>	<i>Tariff Description.</i>
8517.12.00	Telephones for cellular networks or for other wireless networks

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

13. The Third Schedule to the Value Added Tax Act is amended –

(a) by deleting paragraph 1 and substituting therefor the following new paragraph -

1. The following financial services -

(a) the operation of current, deposit or savings accounts, including the provision of account statements;

(b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;

- (c) issuing of credit and debit cards;
- (d) automated teller machine transactions, excluding the supply of automated teller machines and the software to run it;
- (e) telegraphic money transfer services;
- (f) foreign exchange transactions, including the supply of foreign drafts and international money orders;
- (g) cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;
- (h) the making of any advances or the granting of any credit;
- (i) issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- (j) the provision of guarantees, letters of credit and acceptance and other forms of documentary credit;
- (k) the issue, transfer, receipt or any other dealing with bonds, debentures, treasury bills and other forms of security or secondary security;
- (l) the assignment of a debt for consideration;
- (m) the management of a unit trust or collective investment scheme registered by the Capital Markets Authority and managed by the trustees of the scheme;

(n) credit rating bureau services provided by a credit agency registered by the Capital Market Authority;

(o) the provision of the above financial services on behalf of another on a commission basis.

(b) in paragraph 10, by renumbering the existing provision as subparagraph (1) and inserting a new subparagraph as follows -

(2) Sale of buildings.

Amendment of the Fifth Schedule to Cap. 476.

14. The Fifth Schedule to the Value Added Tax Act is amended -

(a) in Part B, in the manner specified in the Second Schedule to this Act;

(b) in Part C -

(i) by deleting the word “other” appearing at the beginning of item 9;

(ii) by inserting the words “parts of” at the beginning of item 17.

Amendment of the Seventh Schedule to Cap. 476.

15. The Seventh Schedule to the Value Added Tax Act is amended -

(a) in paragraph 1, by deleting the words “or within fourteen days of the completion thereof” appearing in subparagraph (a);

(b) in paragraph 10(1), by inserting the words “at the time of making the payments to the supplier” immediately after the word “Regulations” appearing in subparagraph (b).

PART IV – INCOME TAX

**Amendment of
section 2 of
Cap.470.**

16. Section 2 of the Income Tax Act is amended -

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

No.2 of 1998. “telecommunication operator” means a person licensed as such under the Kenya Information and Communications Act, 1998;

(ii) by deleting the definition of “training fee” and substituting therefor the following new definition –

“training fee” means a payment made in respect of a business or user training services designed to improve the work practices and efficiency of an organization, and includes any payment in respect of incidental costs associated with the provision of such services.

**Amendment of
section 4 of
Cap.470.**

17. Section 4 of the Income Tax Act is amended by inserting the following proviso at the end of paragraph (b) -

“Provided that in computing the total income of a partnership, there shall be deducted the cost of medical expenses or medical insurance cover paid by the partnership for the benefit of any partner, subject to a limit of one million shillings per year.

**Amendment of
section 4A of
Cap.470.**

18. Section 4A of the Income Tax Act is amended in subsection (4) by inserting the following new definition immediately after the definition of “company” -

“all loans” shall have the meaning assigned in section 16(3).

**Amendment of
section 7A of
Cap.470.**

19. Section 7A of the Income Tax Act is amended by deleting subsection 3(c).

**Amendment of
section 8 of
Cap.470.**

20. Section 8 of the Income Tax Act is amended -

(a) in subsection (4), by deleting the words “one hundred and eighty thousand” and substituting therefor the words “three hundred thousand”;

(b) in subsection (5) by -

(i) deleting the words “four hundred and eighty thousand” appearing in paragraph (a) and substituting therefor the words “six hundred thousand”;

(ii) deleting the words “forty eight thousand” appearing in subparagraph (b)(i) and substituting therefor the words “sixty thousand”;

(iii) deleting the words “four hundred and eighty thousand shillings” appearing in subparagraph (b) (ii) and substituting therefor the words “six hundred thousand”;

(iv) deleting the words “four hundred and eighty thousand shillings or the first forty- eight thousand shillings” appearing in subparagraph (c)(i) and substituting therefor the words “six hundred thousand shillings or the first sixty thousand shillings”;

(v) deleting the words “four hundred and eighty” appearing in paragraph (d) and substituting therefor the words “six hundred”.

**Amendment of
section 10 of
Cap 470.**

21. Section 10 of the Income Tax Act is amended in paragraph (d) by deleting the words “in Kenya”.

**Amendment of
section 15 of
Cap.470.**

22. Section 15 of the Income Tax Act is amended-

(a) in subsection (2) -

(i) by deleting the words “but excluding the National Social Security Fund” appearing in paragraph (o);

(ii) by inserting a new paragraph immediately after paragraph (x) as follows –

(y) expenditure of a capital nature incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator, provided the amount of deduction shall be limited to five per cent per annum.

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (f) –

(g) in the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year.

(c) in subsection (4) –

(i) by deleting the words “for the next succeeding year of income” appearing in the introductory portion and substituting therefor the words “for that year and the next four succeeding years of income”;

(ii) by deleting the words “subsequent years” appearing in paragraph (ii) of the proviso and substituting therefor the words “next succeeding four years”;

(iii) by adding a new subparagraph in the proviso immediately after subparagraph (iii) as follows-

(iv) Any deficit incurred by a person as at 1st January, 2010 shall be deemed to have been incurred in that year of income.

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

(4A) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond five years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.

Amendment of section 16 of Cap.470.

23. Section 16 of the Income Tax Act is amended by deleting subsection 2(1).

Amendment of section 19 of Cap.470.

24. Section 19 of the Income Tax Act is amended -

(a) in subsection (5), by deleting paragraph (a) and substituting therefor the following new paragraph -

(a) the amount of actuarial surplus, as determined under the Insurance Act and recommended by the actuary to be transferred from the life fund for the benefit of shareholders and policy holders.

(b) in subsection (5A) by deleting the proviso and substituting therefor the following new proviso -

Provided that the amount of negative transfer shall be limited to the actuarial surplus recommended by the actuary to be transferred from the life fund for the benefit of shareholders in previous years of income.

(c) in subsection (6), by deleting paragraph (a) and substituting therefor the following new paragraph -

(a) the same proportion of the amount of actuarial surplus recommended by the actuary to be transferred to the shareholders and policy holders as the actuarial liability in respect of its long term insurance business in Kenya bears to the actuarial liability in respect of its total long term insurance business; and

(d) in subsection (6A), by deleting the proviso and substituting therefor the following new proviso -

Provided that the amount of negative transfers shall be limited to the amount of actuarial surplus recommended by the actuary to be transferred from the life fund for the benefit of the shareholders in the previous years on income.

**Amendment of
section 35 of
Cap.470.**

25. Section 35 of the Income Tax Act is amended in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph -

(a) a management or professional fee or training fee except –

(i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or

(ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel.

Repeal of section 39A of Cap.470.

26. The Income Tax Act is amended by repealing section 39A.

Amendment of section 72 of Cap.470.

27. Section 72 of the Income Tax Act is amended in subsection (1), by deleting the words “for each period of twelve months or part thereof during which the failure continues” appearing in paragraph (a).

Insertion of section 75A in Cap 470.

28. The Income Tax Act is amended by inserting the following new section immediately after section 75 -

Assessment in certain cases

75A. (1) Notwithstanding any other provision of this Act, where the Commissioner has reason to believe that any tax payable by any person is at risk of non-payment -

(a) due to the imminent departure of the person from Kenya; or

(b) where the person, being a company, is about to be liquidated or otherwise wound up or cease business; or

(c) for any other sufficient cause,

the Commissioner may, whether or not the due date for the payment of that tax has arrived, by notice in writing served on that person require that person to pay the tax within the time specified in the notice.

(2) Any person who fails to pay tax when required to do so under subsection (1) shall be guilty of an offence.

**Amendment of
Second
Schedule to
Cap.470.**

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

(a) in paragraph 1 -

(i) by inserting the following new subparagraph immediately after subparagraph (1)(c)–

(cc) in a case referred to in paragraph 5(1)(c) for the year of income commencing on or after 1st January, 2010, ten per cent;

(ii) by inserting the following new subparagraph immediately after subparagraph (1)(d)–

“(dd) in a case referred to in paragraph 5(1)(e) for the year of income commencing on or after 1st January, 2010, fifty per cent.

(iii) by inserting the following new subparagraph immediately after subparagraph (1)(e)–

“(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 sewer and other social infrastructure have been provided, twenty five per cent.

(b) in paragraph 5, by deleting subparagraph (1)(e) and substituting therefor the following new subparagraph –

(e) a building in use as a hostel or an educational building, or a building in use for training, provided such building has been certified by the Commissioner for the purposes of this paragraph;

(c) in paragraph (5)(1), by inserting a new subparagraph immediately after subparagraph (f) as follows -

(ff) a building in use as a commercial building other than a building referred to in subparagraph (1)(f);

(d) in paragraph (7), by inserting the following new subparagraph immediately after subparagraph (3) –

(4) For telecommunication equipment purchased and used by a telecommunication operator, other than machinery specified under subparagraph (3)(d), the amount of wear and tear for a year of income shall be twenty per cent of the amount of expenditure incurred.

(e) in paragraph 24 -

(i) by inserting the following new subparagraphs immediately after subparagraph 1(e) -

(f) on the construction of a building or purchase and installation of machinery whereof the value of the investment is not less than two hundred million shillings;

(g) on the purchase of filming equipment by a local film producer licensed by the Minister responsible for matters relating to communication;

(ii) by inserting the following new subparagraphs immediately after subparagraph (2)(b) -

(c) where the investment occurs within any satellite town adjoining Nairobi, Mombasa or Kisumu, be equal to one hundred and fifty percent of the capital expenditure;

(d) in the case of the equipment referred to in subparagraph (1)(g), be equal to one hundred percent of the capital expenditure.

(f) by inserting a new paragraphs immediately after paragraph 31 as follows-

31A. Where a person incurs capital expenditure under a concessionairing arrangement, the deduction shall be spread and claimed in equal portions over the period of the concession, provided that the period of the concession shall be deemed to commence in the year in which the machinery is first put into use.

31B. Subject to this Schedule, where a person incurs capital expenditure on the purchase or acquisition of the right to the use of a computer software, there shall be deducted, in computing his gains or profits for the year of income in which the software is first used and for subsequent years of income, an amount equal to one-twentieth of that expenditure.

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

30. The Third Schedule to the Income Tax Act is amended in paragraph 5 -

(a) by inserting a new subparagraph immediately after subparagraph (b)(ii) as follows –

(iii) bearer bonds with a maturity of ten years and above, ten percent of the gross amount payable.

(b) by deleting the words “and provided that tax has not been deducted under section 37” appearing in subparagraph (d)(i);

(c) by deleting the words “and provided that tax has not been deducted under section 37” appearing in subparagraph (d)(ii).

PART V – MISCELLANEOUS

**Amendment of
section 2 of
Cap. 27.**

31. The Bills of Exchange Act is amended in section 2 by inserting the following new definitions in proper alphabetical sequence-

Cap. 488. “bank” has the meaning assigned in section 2 of the Banking Act;

Cap. 491. “Central Bank” means the Central Bank of Kenya established under section 3 of the Central Bank of Kenya Act;

“cheque truncation” means a system of cheque clearing and settlement between banks based on electronic data or images or both electronic data and images, without the conventional physical exchange of instruments;

“Minister” means the Minister for the time being responsible for matters relating to finance.

Amendment of section 49 of Cap. 27.

32. Section 49 of the Bills of Exchange Act is amended by inserting the following new paragraph immediately after paragraph (f)–

(ff) where a cheque has been presented in accordance with section 74A, the presentment of an image return document, as defined under section 74B(5), to the drawer or endorser, shall be deemed to be sufficient notice of dishonor.

Amendment of section 52 of Cap. 27.

33. Section 52 of the Bills of Exchange Act is amended by inserting the following subsection immediately after subsection (4)–

(5) Subsection (4) shall not apply in relation to–

(a) presenting a cheque for payment under section 74A; or

(b) a cheque which is paid following presentment under section 74A.

Amendment of section 74A of Cap. 27.

34. Section 74A of the Bills of Exchange Act is amended in subsection (6) by deleting the word “Authority” appearing in paragraph (b) and substituting therefor the words “Central Bank”.

Amendment of section 74B of Cap. 27.

35. Section 74B of the Bills of Exchange Act is amended in subsection (5) by deleting the words “rules of the clearing house” and substituting therefor the words “Central Bank under section 74C”.

Insertion of section 74C in Cap. 27.

36. The Bills of Exchange Act is amended by inserting the following new section immediately after section 74 B–

Regulations. **74C.** The Central Bank may make such regulations as may be necessary or expedient for giving effect to the provisions of this Act in respect of any matter or thing relating to cheque truncation.

Insertion of sections 17A and 17B in Cap. 395.

37. Kenya Airports Authority Act is amended by inserting the following new section immediately after section 17 -

Establishment of Fund. 17A. There is established a Fund to be known as the Kenya Airports Authority Fund (hereinafter referred to as “the Fund”).

Sources of Fund. 17B. There shall be paid into the Fund –

Cap.475. (a) all proceeds from the charge collected under the Air Passenger Service Charge Act;

(b) any monies appropriated by Parliament for the purposes of the Authority;

(c) the rates, charges, dues, or fees levied by the Authority under this Act;

(d) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust; and

(e) all moneys from any other sources provided for or donated or lent to the Authority.

Payments out of the Fund. 17C. There shall be paid out of the Fund any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

Amendment of section 6 of Cap.403. **38.** Section 6 of the Traffic Act is amended in subsection (1A) by deleting the proviso and substituting therefor the following new proviso –

Provided that a commercial vehicle which requires inspection shall be inspected and registered within thirty days of release by the customs.

Amendment of section 9 of Cap.403. **39.** Section 9 of the Traffic Act is amended –

(a) by deleting subsection (2);

(b) in subsection (3), by deleting the expression “subsections (1) and (2)” and substituting therefor the expression “subsection (1)”;

(c) in subsection (5), by deleting the expression “subsection (1), (2) and (4)” and substituting therefor the expression “subsection (1) and (4)”.

Amendment of section 98 of Cap.403. **40.** Section 98 of the Traffic Act is amended in subsection (4) by deleting the words “two years” and substituting therefor the words “one year”.

Amendment of section 10 of Cap 405. **41.** Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act is amended by deleting subsection (5).

Amendment of section 2 of Cap 475. **42.** The Air Passenger Service Charge Act is amended in section 2, by inserting the following new definition in proper alphabetical sequence –

Cap.469 “Kenya Revenue Authority” means the Authority by that name established under section 3 of the Kenya Revenue Authority Act.

Amendment of section 5 of Cap 475.

43. Section 5 of the Air Passenger Service Charge Act is amended -

(a) in subsection (2), by deleting the word “Government” and substituting therefor the word “Commissioner”;

(b) in subsection (5), by deleting the word “Government” and substituting therefor the word “Commissioner”.

Insertion of new section 6A in Cap.475.

44. The Air Passenger Service Charge Act is amended by inserting the following section immediately after section 6 –

Charge to be paid into the Kenya Airports Authority Fund. Cap. 395.

6A. The Commissioner shall pay the charge collected by him under this Act into the Kenya Airports Authority Fund established under the Kenya Airports Authority Act, after deducting the expenses of the Kenya Revenue Authority for the collection of the charge.

Amendment of section 31 of Cap.485A.

45. Section 31 of the Capital Markets Act is amended in subsection (1) by deleting the words “trade in” appearing immediately after the words “dealer shall” and substituting therefor the words “transfer”.

Amendment of section 23 of Cap.487.

46. Section 23 of the Insurance Act is amended by inserting the following new subsections immediately after subsection (4) -

(4A). No person shall -

(a) control, or be beneficially entitled, directly or indirectly, to more than twenty-five per cent of the listed share capital or voting rights of an insurer; or

(b) be entitled to appoint more than twenty-five per cent of the board of directors of an insurer; or

(c) be entitled to receive more than twenty-five per cent of the aggregate dividends of an insurer in any given financial year:

Provided that this subsection shall not apply to –

(i) a corporate entity licensed by an insurance, banking, pensions or securities regulator in Kenya; or

(ii) a foreign corporate entity licensed by an insurance, banking, pensions or securities regulator in its country of origin; or

(iii) the Government of Kenya;

Cap.446. (iv) a state corporation within the meaning of the State Corporations Act.

(4B) No person shall be appointed as an executive director, managing director, principal officer or other senior management official of an insurer if such person-

(a) controls, or is beneficially entitled, directly or indirectly, to more than twenty per cent of the listed share capital or voting rights of the insurer; or

(b) is entitled to appoint more than twenty per cent of the Board of Directors of the insurer; or

(c) is entitled to receive more than twenty per cent of the aggregate dividends of the insurer in any given financial year.

(4C) A person who, at the commencement of subsections (4A) and (4B), holds any right, interest or office in an insurer contrary to the provisions of those subsections, shall comply with the requirements thereof by the 31st December, 2010.

**Amendment
of section 41
of Cap.487**

47. Section 41 of the Insurance Act is amended in subsection (8) by deleting the proviso and substituting therefor the following -

Provided that -

(a) this subsection shall not apply to -

(i) buildings and other real property owned by the insurer jointly with any organisation;

(ii) investments referred to in section 50(3);

(iii) cash held by banks on behalf of the insurer in current or savings accounts, or subject to section 50(4)(g), fixed deposits; and

(b) investments of a general insurance business in a company or a group of companies which is a bank or a financial institution, or a group of banks or financial institutions shall, pursuant to section 50(10), not exceed ten percent.

Insertion of section 76A in Cap 487.

48. The Insurance Act is amended by inserting a new section immediately after section 76 as follows-

Insurance cover upon change of ownership of motor vehicle.

76A. Upon change of ownership of a motor vehicle, an insurer shall -

(a) only issue a temporary policy for a period not exceeding three months, pending the registration of the motor vehicle in the name of the new owner;

(b) not renew the temporary cover or issue any new policy in respect of the motor vehicle, unless the new owner provides proof of the registration of the motor vehicle in his name by the Registrar of Motor Vehicles.

Amendment of section 188 of Cap.487

49. Section 188 of the Insurance Act is amended in subsection (2) by deleting the expression “30th November” and substituting therefor the expression “30th September”.

Amendment of section 203 of Cap.487

50. Section 203 of the Insurance Act is amended in subsection (3) by deleting expression “(2)” appearing before the words “a penalty equal to” and substituting therefor expression “(1)”.

Amendment of the Second Schedule to Cap.487.

51. The First Schedule to the Insurance Act is amended in paragraph 3 by deleting the expression “(g)” appearing in subparagraph (3) and substituting therefor the expression “(h)”.

**Amendment
of section 2 of
Cap.488.**

52. Section 2 of the Banking Act is amended -

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

“agency” means an entity contracted by an institution and approved by the Central Bank to provide the services of the institution on behalf of the institution, in such manner as may be prescribed by the Central Bank;

(b) in the definition of the word “bank” by deleting the words “and includes the Co-operative Bank of Kenya Limited”;

(c) in the definition of “branch”, by inserting the word “permanent” immediately before the word “premises”;

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

“place of business” means any premises, other than the head office, including a branch, an agency or a mobile unit, or such other premises as may, from time to time, be prescribed by the Central Bank, at which an institution transacts banking or financial business in Kenya and which is open to the public.

**Amendment
of section 3 of
Cap.488.**

53. Section 3 of the Banking Act is amended in subsection (1) by inserting the words “or a duly approved agency conducting banking business on behalf of an institution” immediately after the word “institution” appearing in paragraph (a).

**Amendment
of section 12
of Cap.488.**

54. Section 12 of the Banking Act is amended -

(a) by deleting the words “in Kenya” appearing in the introductory portion;

(b) in paragraph (b) -

(i) by deleting subparagraph (ii) of the proviso and substituting therefor the following new subparagraph –

(ii) a shareholding in any corporation established for the purpose of promoting development on Kenya and approved by the Minister; or in a foreign company which is licensed to carry on the business of the institution in its country of incorporation and approved by the Central Bank;

(ii) by inserting a new subparagraph in the proviso immediately after paragraph (ii) as follows -

(iii) approval granted by the Central Bank shall be subject to such conditions as the Central Bank may deem appropriate.

**Amendment
of section 16
of Cap.488.**

55. Section 16 of the Banking Act is amended in subsection (1) by inserting the words “or a duly approved agency conducting banking business on behalf of an institution” immediately after the word “licence”.

**Amendment
of section 20
of Cap.488.**

56. Section 20 of the Banking Act is amended -

(a) in subsection (1), by deleting the words “bad and doubtful debts” and substituting therefor the words “loans, advances and other assets”;

(b) in subsection (2), by deleting the words “bad and doubtful debts” wherever they occur and substituting therefor the words “loans, advances and other assets”.

**Amendment
of section 27
of Cap.488.**

57. Section 27 of the Banking Act is amended by inserting the words “or their duly authorised agencies” after the word “institutions” wherever it occurs.

**Amendment
of section 28
of Cap.488.**

58. Section 28 of the Banking Act is amended in subsection (1) by inserting the words “and their agencies” immediately after the word “institutions” wherever it occurs.

**Amendment
of section 31
of Cap.488.**

59. Section 31 of the Banking Act is amended in subsection (3) –

(a) by inserting the words “fiscal or tax agency, fraud investigations agency” immediately after the words “financial regulatory authority” appearing in paragraph (a);

(b) by inserting the following proviso at the end of paragraph (a) –

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

**Amendment
of section 32
of Cap.488.**

60. Section 32 of the Banking Act is amended in subsection (1), by deleting the words “institution and its” and substituting therefor the words “institution and its agencies and of their”.

**Amendment
of section 54
of Cap.488.**

61. Section 54 of the Banking Act is amended in paragraph (c) by deleting the words “other than the Co-operative Bank of Kenya”.

Amendment of section 26 of Cap.491.

62. Section 26 of the Central Bank of Kenya Act is amended by inserting the following proviso at the end of subsection (1) –

Provided that if, at any time, the Bank is unable to maintain the reserve of external assets required under this subsection, it shall provide the Minister with a time-bound remedial plan.

Repeal and replacement of section 33L of Cap.491.

63. The Central Bank of Kenya Act is amended by repealing section 33L and replacing it with the following new section -

General penalty under Part.

33L. A person convicted of an offence under this Part for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Insertion of section 56A in Cap.491.

64. The Central Bank of Kenya Act is amended by inserting the following new section immediately after section 56 -

General Penalty.

56A. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Amendment of section 4 of Cap. 493B.

65. The Kenya Post Office Savings Bank Act is amended in section 4 by inserting a new paragraph immediately after paragraph (f) as follows –

(ff) to deal in foreign exchange.

Insertion of section 8B in Cap.518.

66. The Foreign Investment Protection Act is amended by inserting the following new section immediately after section 8A -

Special arrangement for investment promotion and protection.

8B. (1) The Minister for Finance may, from time to time, by notice in the Gazette declare that the arrangement specified in the notice, being arrangements made with the Government of any country with a view to promoting and protecting the investments of that country in Kenya, shall have effect according to its tenor.

(2) A notice under this section may be amended or revoked by a subsequent notice and an amendment or revoking notice may contain such transitional provision or termination date as the Minister may consider necessary or expedient.

Amendment of section 2 of No. 3 of 1997.

67. Section 2 of the Retirement Benefits Act is amended in the definition of the word “actuary” by deleting the words “recognized as such by” and substituting therefor the words “who is a Fellow of”.

Amendment of section 37 of No. 3 of 1997.

68. Section 37 of the Retirement Benefits Act is amended in the proviso by deleting the expression “five million” and substituting therefor the expression “one hundred million”.

Amendment of section 38 of No. 3 of 1997.

69. Section 38 of the Retirement Benefits Act is amended in subsection (1) by adding the following immediately after paragraph (c) -

“or in the case of scheme funds which comprise any statutory contributions, be placed in any investment other than Government securities or infrastructure bonds issued by public institutions”.

Repeal and replacement of section 18 of No 9 of 2001.

70. The Coffee Act is amended by repealing section 18 and replacing it with the following new section -

Kinds of licences. 18. Licences under section 17 shall be of the following kinds –

(a) a coffee dealers licence, authorizing the holder to-

(i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and

(ii) deal in roasting, blending and packaging coffee for local sale or export,

(b) a coffee miller's licence authorizing the holder to conduct the business of milling;

(c) a marketing agent's licence, authorizing the holder to conduct the business of marketing coffee and auctioneering;

(d) a warehouseman's licence, authorizing the holder to conduct the business of warehousing coffee;

(e) a pulping station licence, authorizing the holder to operate a pulping station.

**Amendment
of section 35
of 14 of 2003.**

71. Section 35 of the Persons with Disabilities Act, 2003 is amended by deleting subsection (2) and substituting therefor the following new subsection -

(2) The Minister responsible for finance may, by notice in the Gazette, prescribe the procedure for application for and grant of exemption under this section.

**Amendment of
Section 34 of
No.19 of 2006.**

72. Section 34 of the Microfinance Act is amended-

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

(3A). The Deposit Protection Fund Board and institutions licensed under this Act shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non performing loans as may, from time to time, be specified by the Central Bank in regulations.

(b) in subsection (4) by inserting the word “other” immediately before the word “information”.

**Amendment of
section 48 of
No.19 of 2006.**

73. Section 48 of the Microfinance Act is amended by inserting the following new subsection immediately after subsection (2) -

(2A) The Central Bank may issue directions and guidelines to institutions generally for the better carrying out of their functions, and in particular, with respect to –

(a) the standards to be adhered to in the conduct of their business in Kenya or in countries where their branches or subsidiaries are located;

(b) guidelines to be adhered to by institutions in order to maintain a stable and efficient deposit taking microfinance system.