

LEGAL NEWS: BUSINESS LAWS (AMENDMENT ACT) OF 2020



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Keen on improving the environment of doing business in the country, Kenya has enacted a number of legislative reforms following the presidential assent of the Business Laws (Amendment) Bill of 2019 on 19 March 2020. This was done against the backdrop of the World Bank Survey on Ease of Doing Business of 2020, in which Kenya ranked at number 56 out of 190 Economies surveyed. The legal reforms undertaken through the Business Laws (Amendment Act) of 2019 (BLAA) address some of the shortcomings identified in the World Bank Survey. For instance, it is noteworthy that registration of property is one among the 12 indicators utilised in the Survey to gauge ease of doing business. Kenya has consistently ranked below average on this score in part because of the lengthy and manual processes involved in property registration. Consequently, the issue has partially been addressed by the abolishment of the prerequisite of having to obtain the consent of the national or county government before the registration of transferred or encumbered leasehold interests in land. Kenya has in addition reinstated into the Companies Act of 2015 the protection of minority shareholders, which is another yardstick used in the World Bank Survey. Other amendments touch on the Insolvency Act of 2015

By means of this Legal Update, we take you through these legislative reforms brought by the new amendments.

ELECTRONIC SIGNATURES

The laws relating to acquisition and registration of interest in land, namely, the Law of Contract Act, the Registration of Documents Act and the Land Registration Act have been amended to make allowance for use of electronic signatures on documents and to empower the Registrars to maintain, in addition to existing physical formats, electronic registers. The Survey Act has also been amended to allow for the electronic processing and keeping of survey plans and records by the Director of Surveys. With electronic execution of documents (coupled with digitisation of land records, which has been ongoing at a somewhat slow pace), timelines for completion of land transactions such as transfers, securities, and leases, amongst others, are expected to shorten considerably.

RENT AND RATES CLEARANCE CERTIFICATES

The BLAA has abolished the requirement of production of rent clearance certificate (in case of a leasehold interest) and rates clearance certificate hitherto required before registration of an instrument of transfer. Obtaining the stated documents has been time consuming, thus

delaying completion of land transactions. Whilst this is a welcome relief to parties, purchasers will consequently have to ensure that tight warranties and indemnities are built into the contracts to protect themselves against accrued rent and rates arrears.

CONSENT

Another bottleneck in the registration of instruments securing interest in land has been the requirement of consent from the national or county government where the property is held as leasehold. With the abolition of the prerequisite of having to obtain such consent, land transactions will certainly take a shorter time to conclude.

COMPANIES ACT

The changes to the Companies Act of 2015 are as follows:

- Abolition of the requirement of a common seal in the execution of deeds, contracts and documents on behalf of a company. Pursuant to the amendments made, two authorised agents or a director of a company, in the presence of a witness, will validly execute documents, deed and contracts on behalf of a company.
- Outlawing of, and prohibition against issuance of, bearer shares. The use of bearer shares has significantly reduced globally and Kenya seems to follow the global trends in outlawing the same. The law now provides that any company that had issued bearer

shares is required to convert them into registered shares within 9 months of the enactment of the BLAA, failing which the company and its officers commit an offence punishable by a fine not exceeding Kenya Shillings 500,000.00.

- Reinstatement of minority shareholders' right by raising compulsory selling out, known as 'squeezing in', to 90% from 50%. This is a key win and protection to minority shareholders, whose rights stood to be undermined by the low threshold of 50% in the context of a compulsory sale.

INSOLVENCY ACT

The Insolvency Act of 2015 has been amended to provide that a court shall, in addition to other grounds, take into consideration the perishability of a movable asset, and whether or not it is used to maintain the company as a going concern, before lifting a moratorium that may have been imposed in order to protect the secured creditors' rights.

Further, the amendment has introduced a provision in the Insolvency Act of 2015, requiring an insolvency practitioner appointed to oversee administration of a company to furnish a creditor with information relating to administration within five days of the request, or within such other timeline that may be agreed upon with the creditor. This is meant to safeguard the creditors' interest.

This information does not constitute legal advice and is for general information only. For specific information regarding the highlighted amendments and their impact on your business, please get in touch with Chege Njoroge at: njoroge@lesinkonjoroge.com and Tom Kabau at: tomkabau@lesinkonjoroge.com