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*Kenya Gazette Supplement No. 70 (National Assembly Bills No. 23)*



REPUBLIC OF KENYA

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# ***KENYA GAZETTE SUPPLEMENT***

## **NATIONAL ASSEMBLY BILLS, 2017**

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**NAIROBI, 12th May , 2017**

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### CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Companies (Amendment) Bill, 2017..... 527



**THE COMPANIES (AMENDMENT) BILL, 2017**

**A Bill for**

**AN ACT of Parliament to amend the Companies Act,  
2015**

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

**1.** This Act may be cited as the Companies (Amendment) Act, 2017.

Short title.

**2.** Section 3 of the Companies Act, 2015, hereinafter referred to as the “Principal Act” is amended in subsection (1)—

Amendment of section 3 of No. 15 of 2015.

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

“associated company” means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

(b) by deleting the definition of the term “Cabinet Secretary” and substituting therefor the following new definition—

“Attorney-General” means the Attorney-General appointed under Article 156 the Constitution;

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

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

No.15 of 2008.

(d) by deleting the definitions of the term “holding company” and substituting therefor the following new definition—

“holding company” in relation to another company, means a company that—

- (a) controls the composition of that other company's board of directors;
- (b) controls more than half of the voting rights in that other company;
- (c) holds more than half of that other company's issued share capital; or
- (d) is a holding company of a company that is that other company's holding company; and
- (e) by deleting the definition of the term “prescribed financial accounting standards” and substituting therefor the following new definition—

“prescribed financial accounting standards” means statements of standard accounting practice issued by the Institute of Certified Public Accountants of Kenya in accordance with the Accountants Act.

3. Section 27 of the principal Act is amended in subsection (2) by deleting the words “an old public” and substituting therefor the words “a private” appearing in paragraph (h).

Amendment of section 27 of No. 15 of 2015.

4. Section 58 of the principal Act is amended by inserting the following new subsections immediately after subsection (4)—

Amendment of section 58 of No. 15 of 2015.

“(5) If the company does not comply with the direction issued under subsection (1) within fourteen days, the Registrar shall publish a notice in the *Gazette* to strike the name of the company off the Register.

(6) As soon as practicable after striking the name of the company off the Register, the Registrar shall publish in the *Gazette* a notice indicating that the name of the company has been struck off the register.

(7) Upon publication of the notice under subsection (6), the company shall be deemed to have been dissolved.

(8) Despite subsection (7)—

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not

been dissolved; and

- (b) nothing in this section shall affect the power of the Court to liquidate a company the name of which has been struck off the Register.”

**5. Section 77 of the principal Act is amended—**

Amendment of section 77 of No. 15 of 2015.

- (a) in subsection (1) by deleting the words “(but only if)”; and
- (b) in subsection (2) by deleting the words “or into a private company limited by guarantee” appearing in paragraph (c).

**6. Section 85 of the principal Act is amended in subsection (2) by deleting the words “or into a private company limited by guarantee” appearing in paragraph (d).**

Amendment of section 85 of No. 15 of 2015.

**7. The principal Act is amended by repealing section 90 and replacing therefor the following new section—**

Repeal of section 90 of No. 15 of 2015.

Registrar not to register conversion unless application for registration complies with prescribed requirements.

**90. The Registrar shall not register the conversion of a public limited company into an unlimited private company unless the application for registration—**

- (a) contains a statement of the company's new name on conversion; and
- (b) is accompanied by—
- (i) an assent to the company's conversion, authenticated by or on behalf of all the members of the company; and
- (ii) a copy of the company's articles as proposed to be amended.

**8. Section 93 of the principal Act is amended—**

Amendment of section 93 of No. 15 of 2015.

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

“(1) Every company shall keep a register of its members which shall include information relating to beneficial owners of the company, if any.”

(b) in subsection (2), by inserting the following new paragraph immediately after paragraph (c)—

(d) the name and address of the beneficial owners, if any.

(c) by deleting subsection (8) and substituting therefor the following new subsection –

“(8) A company shall lodge with the Registrar a copy of its register of members including information relating to beneficial owners, if any, within thirty days after completing its preparation.”;

(d) in subsection (9) by inserting the words “other than a public limited company” immediately after the word “company”.

**9.** Section 94 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (a)—

Amendment of section 94 of No. 15 of 2015.

“(aa) if the register is prepared at another office of the company other than the registered office, a copy of the register may be kept at that other office;

(ab) if the register is prepared by another person on behalf of the company, a copy of the register may be kept at the office of that other person.”

**10.** Section 123 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (d)—

Amendment of section 123 of No. 15 of 2015.

“(e) a brother or sister of the director;

(f) a brother or sister of the spouse of the director;  
or

(g) a grandchild of the director; or

(h) a spouse of any of the persons specified in paragraphs (b), (e), (f) and (g).”

**11.** Section 135 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (f)—

Amendment of section 135 of No. 15 of 2015.

“(g) the person’s other company directorships, if any.”