

COMPANIES (AMENDMENT) BILL, 2021

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A Bill for

AN ACT of Parliament to amend the Companies Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

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| Short title | 1. This Act may be cited as the Companies (Amendment) Act, 2021. |
| Amendment of section 7 of the principal Act. | 2. The Companies Act, No. 17 of 2015, in this Act referred to as “the principal Act” is amended in section 7 by deleting the word “incorporate” appearing in paragraph 7(1)(c) and substituting therefore the word “incorporation”. |
| Amendment of section 11 of the principal Act. | 3. The principal Act is amended in section 11 by deleting subsection (2) and substituted therefore the following new sub section— (2) A company may not be formed for an unlawful purpose. |
| Amendment of section 13 of the principal Act. | 4. The principal Act is amended in section 13(2) by inserting the following new paragraph immediately after paragraph 2(a)— (aa) statement of the proposed company's intended primary business activities; |
| New insertion. | 5. The principal Act is amended by inserting the following new section immediately after section 13(4) (c) — Statement of initial beneficial owner. (d) . An applicant for registration of a company, shall state in the statement of initial beneficial owner required to be submitted to the registrar, the particulars of initial beneficial owners in accordance with section 93A of the Act. |
| Amendment of section 19 of the principal Act. | 6. The principal Act is amended in section 19 by inserting the following new paragraph immediately after paragraph (g)— (g) the persons named in the statement of initial beneficial owner shall be the beneficial owner of the company; |
| Amendment of section 24 of the principal Act. | 7. The principal Act is amended in section 24 by deleting the number “2” appearing in subsection (2) and substituting therefore the number “21”. |
| Amendment of section 29 of the principal Act. | 8. The principal Act is amended in section 29 by deleting subsection (3). |

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Amendment of section 31 of the principal.
Amendment of section 46 of the principal Act.

- 9.** The principal Act is amended by deleting section 31.
- 10.** The principal Act is amended by deleting section 46 and substituting therefore the following new section—

Company to have registered office. **46.** A company shall at all times ensure that it has a registered office to which all communication and notices may be addressed.

Amendment of section 48 of the principal Act.

- 11.** The principal Act is amended in section 48 by deleting the words “special reason” appearing in subsection (2) and substituting therefore the words “reasonable cause”.

Amendment of section 51 of the principal Act.

- 12.** The principal Act is amended in section 51 by deleting subsection (1) and substituting therefore the following new subsection—

(1) The Registrar shall require an applicant for a name reservation, to seek the authority of a state organ or any public entity for the use of a specified name, if the use of the proposed name is likely to give the impression that the name is connected with the state organ or public entity.

Amendment of section 53 of the principal Act.

- 13.** The principal Act is amended in section 53 by deleting the word “may” and substituting therefore the word “shall”.

Amendment of section 54 of the principal Act.

- 14.** The principal Act is amended by deleting section 54 and substituting therefore the following new section—

54. A private company may be registered only with a name that ends with the word “limited” or the abbreviation “ltd”.

Amendment of section 55 of the principal Act.

- 15.** The principal Act is amended by deleting section 55 and substituting therefore the following new section—

Exemption from requirement to use of “limited”. **55.** A private company may be exempted from using the word “limited” or “ltd” as required by section 54 if—

- (a) the objects of the company are for the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and

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- (b) the company's articles—
 - (i) require its income to be applied in promoting its objects,
 - (ii) prohibit the payment of dividends, or any return of capital, to its members, and
 - (iii) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own, or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto.

Amendment of section 58 of the principal Act.

16. The principal Act is amended in section 58 by deleting subsection (2).

New insertion.

17. The principal Act is amended by inserting the following new section immediately after section 61—

Misleading indication of activities

61A. (1) If in the opinion of the Registrar, the name by which a company is registered gives a misleading indication of the nature of its activities as to be likely to cause harm to the public, the Registrar may in writing, direct the company to change its name.

(2) A person who has been issued with a notice under subsection (1), must comply with the direction, within six weeks from the date of the direction.

Amendment of section 62 of the principal Act.

18. The principal Act is amended in section 62 by deleting paragraph (b) and substituting therefore the following new paragraph—

- (b) resolution of the directors acting in accordance with a direction issued by the Registrar under section 58, 60 or a court order issued under section 61 of this Act.

Amendment of section 71 of the principal Act.

19. The principal Act is amended in section 71 by deleting the word “be” appearing between the word “is” and “paid” in paragraph “b”.

Amendment of section 75

20. The principal Act is amended in section 75 by deleting subsection (3) and

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of the principal Act.

substituting therefore the following new subsection—

(3) If all the partners in a firm are joint secretaries, consent must be given by all the partners.

Amendment of section 78 of the principal Act.

21. The principal Act is amended in section 78 by deleting paragraph (1)(b).

Amendment of section 85 of the principal Act.

22. The principal Act is amended in section 85 by deleting the phrase “or by guarantee” appearing in subsection (3).

Amendment of section 86 of the principal Act.

23. The principal Act is amended in section 86 by deleting—

(a) sub paragraph (1)(b)(ii); and

(b) section (2).

Amendment of section 87 of the principal Act.

24. The principal Act is amended in section 87 by inserting the word “of” between the word “conversion” and the article “an”.

New insertion.

25. The principal Act is amended by inserting the following new section immediately after section 91—

Effect of conversion.

91A. A conversion of a company under this Part shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding any change in the company’s name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

Amendment of section 93A of the principal Act.

26. The principal Act is amended in section 93A by deleting subsection (3) and substitute therefore with the following new subsection—

(3) Every registered company, other than a company wholly owned by a state corporation, shall lodge with the Registrar a statement of beneficial ownership information within 30 days after the coming effect of this section or some other time as may be prescribed by the Registrar.

Amendment

27. The principal Act is amended in section 112 by deleting the definition of the phrase

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of section 112 of the principal Act.

“insurance business” in paragraph 112(4)(b) and substituting therefore with the following new definition—

(b) “insurance business” has the meaning assigned to it under the Insurance Act;

Amendment of section 132 of the principal Act

- 28.** The principal Act is amended in section 132 by:
- (a) deleting the word “public” appearing in the marginal note and substituting therefore the words “limited and unlimited”
 - (b) deleting the word “public” in subsection (1).

Amendment of section 164 of the principal Act

- 29.** The principal Act is amended in section 164 by deleting the word “resolution” and substituting therefore the words “special resolution” in subsections (1),(2), (3)(b)

Amendment of section 165 of the principal Act,

- 30.** The principal Act is amended in section 165 by deleting the word “resolution” and substituting therefore the words “special resolution” in subsections (2)(b), (3),(4)(b)

Amendment of section 166 of the principal Act

- 31.** The principal Act is amended in section 166 by deleting the word “resolution” and substituting therefore the words “special resolution” in subsections (2)(b), (3),(4)(b)

Amendment of section 167 of the principal Act

- 32.** The principal Act is amended in section 167 by deleting the word “resolution” and substituting therefore the words “special resolution” in subsections (2)(b), (3),(4)(b)

Amendment of section 172 of the principal Act.

- 33.** The principal Act is amended in section 172 by deleting the joinder “and” appearing in the marginal note.

Amendment of section 197 of the principal Act.

- 34.** The principal Act is amended in section 197 by deleting the word “disclosure” appearing in the marginal note and substituting therefore the word “disclose”.

Amendment of section 215 of the principal Act.

- 35.** The principal Act is amended in section 215 by—
- (a) deleting subsection (2) and substituting therefore the following new subsection; and
 - (2) The maximum period of disqualification that can be imposed in a disqualification order made under this section shall be fifteen years.

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(b) deleting subsection (3).

Amendment of section 225 of the principal Act.

36. The principal Act is amended in section 225 by deleting the marginal note and substituting therefore the following new marginal note—

“Application for disqualification order”.

Numbering.

37. The principal Act is amended by—

(a) numbering the header “Application for leave under an order or undertaking” appearing between section 225 and 227, as “226”; and

(b) deleting the phrase “by a court other than the Court”.

Amendment of section 226 of the principal Act.

38. The principal Act is amended in section 226 by inserting the phrase “the Registrar, the Official Receiver, the liquidator or any past or present member or creditor of the company” between the word “Attorney General” and “Shall”.

New section

39. The principal Act is amended by inserting the following new "section 243(1A)" immediately after "Section 243":

243(1A). A private company which subsection (1) does not apply or Company limited by guarantee may elect to appoint a secretary.

New Section

40. The principal Act is amended by inserting the following new “section 245A” immediately after “section 245”

245A. A consent by the person named as secretary, or each of the persons named as joint secretaries, to act as such.

Amendment of section 247 of the principal Act.

41. The principal Act is amended by deleting section 247.

Amendment of section 248 of the principal Act.

42. The principal Act is amended in section 248 by deleting subsection (1) and substituting therefore the following new subsection—

(1) A public company, private company and company limited by guarantee shall keep a register of its secretaries.

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Amendment of section 249 of the principal Act.

43. The principal Act is amended in section 249 by deleting the word “public” appearing in subsections (1), (2) and (3).

Amendment of section 250 of the principal Act.

44. The principal Act is amended in section 250 by deleting the word “public” appearing in subsections (1), (2) and (3).

Amendment of section 275A of the principal Act.

45. The principal Act is amended in section 197 by deleting the marginal note and substituting therefore the following new marginal note:
275A. Private companies and Company Limited by Guarantee: Annual General Meeting.

Amendment of section 251 of the principal Act.

46. The principal Act is amended in section 251 by—
(a) deleting subsection (2), and substituting therefore the following new subsection—
—
(2) If all the partners in a firm are to be joint secretaries, consent must be given by all the partners.

(b) deleting the word “public” appearing in subsections (1) and (3).

Amendment of section 256 of the principal Act.

47. The principal Act is amended in section 256 by inserting the word “articles” immediately after the word “company's” appearing in subsection (5).

Amendment of section 281 of the principal Act.

48. The principal Act is amended in section 281 by—
(a) deleting subsection (1);

(b) deleting the word “public” appearing in subsection (2), between the article “a” and word “company”; and

(c) deleting the phrase “1 or” appearing in subsection (3).

Amendment of section 283 of the principal Act.

49. The principal Act is amended in section 283 by deleting the word “is” appearing in subsection (1).

Amendment of section 286 of the principal Act.

50. The principal Act is amended in section 286 by deleting the phrase “281(1)” appearing in subsection (1).

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Amendment of section 287 of the principal Act.

- 51.** The principal Act is amended in section 287 by—
- (a) deleting paragraph (3)(b); and
 - (b) deleting subsection (4).

Amendment of section 311 of the principal Act.

- 52.** The principal Act is amended in section 311 by
- (a) deleting the number “40” appearing in paragraph (a); and
 - (b) deleting subsection (2).

Amendment of section 333 of the principal Act.

- 53.** The principal Act is amended in section 333 by inserting the following new paragraph immediately after paragraph 333(3)(a)—
- (aa) is accompanied by a statement of increase in capital where the allotment has resulted to such an increase;

Amendment of section 363 of the principal Act.

- 54.** The principal Act is amended in section 311 by deleting the number “40” appearing in subsection (2).

Numbering

- 55.** The principal Act is amended in section 359 by numbering subsection (1).

Amendment of section 397 of the principal Act

- 56.** The principal Act is amended in section 397 by deleting the word “having” appearing in the marginal note and substituting therefore the word “without”.

Amendment of section 405 of the principal Act

- 57.** The principal Act is amended in section 405 by deleting the word “shores” appearing in the marginal note and substituting therefore the word “shares”.

Amendment of section 421 of the principal Act

- 58.** The principal Act is amended in section 421 by—
- (a) inserting the phrase “copy of the solvency statement” immediately after the word “registration” in subsection (1); and
 - (b) deleting subsection (3)(a).

Amendment of section 548 of the principal Act.

- 59.** The principal Act is amended in section 548 by deleting the word “six” and substituting therefore the word “ten” in subsection (1).

Amendment of section

- 60.** The principal Act is amended in section 588 by inserting the word “that” immediately after the word “fact”.

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588 of the principal Act

Amendment of section 408 of the principal Act.

- 61.** The principal Act is amended in section 408 by—
- (a) deleting subsection (3); and
 - (b) deleting subsection (4).

Amendment of section 409 of the principal Act.

- 62.** The principal Act is amended in section 409 by deleting the word “not” appearing immediately after the word “been” in subsection (4).

Amendment of section 492 of the principal Act.

- 63.** The principal Act is amended in section 492 by deleting the phrase “or including” appearing immediately after the word ”of” in subsection (1).

Amendment of section 539 of the principal Act.

- 64.** The principal Act is amended in section 539 by deleting the word “examined” appearing in subsection (1), and substituting therefore the word “exempted”.

Amendment of section 545 of the principal Act.

- 65.** The principal Act is amended in section 545 by deleting the formula “PP = TV x AI—TV” appearing in paragraph 545(3)(b) and substituting therefore the following new formula—

$$\text{“PP=TV x } \frac{\text{AI}}{\text{TV}} \text{”}$$

Amendment of section 549 of the principal Act.

- 66.** The principal Act is amended in section 549 by deleting subsection (4).

Amendment of section 558 of the principal Act.

- 67.** The principal Act is amended in section 561 by deleting the word “six” and substituting therefore the word “ten”.

Amendment of section 561 of the principal Act.

- 68.** The principal Act is amended in section 561 by deleting the word “six” appearing in subsection (1) and substituting therefore the word “ten”.

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Amendment of section 777 of the principal Act.

69. The principal Act is amended by deleting section 777.

Amendment of section 778 of the principal Act.

70. The principal Act is amended by deleting section 778.

Amendment of section 779 of the principal Act.

71. The principal Act is amended in section 779 by inserting the following new subsection immediately after subsection (4)—

(5) For purposes of this section, “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance.

Amendment of section 786 of the principal Act.

72. The principal Act is amended in section 786 by—

- (a) deleting the word “two” appearing in sub paragraph (1)(a)(i) and substituting therefore the word “one”; and
- (b) inserting the following new sub paragraph immediately after subparagraph (ii)—
 - (iii) holder of debentures holding at least twenty percent of the debentures issued by the companies; or

Amendment of section 787 of the principal Act.

73. The principal Act is amended in section 787 by inserting a new subsection(f) immediately after subsection(2)(e) –

S 787(2)(f) in the case of a foreign company, that the appropriate authority of another country has requested that an investigation be conducted pursuant to this section in respect of the company.”

New insertion.

74. The principal Act is amended by inserting the following new section immediately after section 799—

Appointment of inspectors.

799A. (1) The Attorney General may appoint one or more competent inspectors to investigate the affairs of a company and to report on its affairs in such manner as the Attorney General directs if it appears to the Attorney General that there are circumstances suggesting—

- (a) that the company's business is being conducted—
 - (i) with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose; or

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- (ii) in a manner oppressive to its members or to any part of them;
- (b) that the company was formed for a fraudulent or unlawful purpose;
- (c) that persons responsible for the company's formation or the management of its affairs are or have been guilty of fraud, misfeasance or other misconduct towards it or towards its members;
- (d) that the company's members have not been given all the information with respect to its affairs that they might reasonably expect to have been given;
- (e) that it would be in the public interest to do so; or
- (f) in the case of a foreign company, that the appropriate authority of another country has requested that an investigation be conducted pursuant to this section in respect of the company”

(2) The Attorney General may, upon the receipt of the report by the inspector, apply to court for any orders necessary to safeguard the interest of the company and members of the company if it appears to the Attorney General that such orders may be necessary.

Amendment of section 816 of the principal Act.

75. The principal Act is amended in section 816 by deleting the words “Cabinet Secretary” appearing in paragraph (2)(a) and substituting therefore the words “Attorney General”.

Amendment of section 823 of the principal Act.

76. The principal Act is amended in section 823 by—
(a) deleting the phrase “except provided by subsection (2)” appearing in subsection (1); and
(b) deleting subsection (2).

Amendment of section 858 of principal Act.

77. The principal Act is amended in section 858 by deleting the word “854” and substituting therefore the word “853”.

Amendment of section

78. The principal Act is amended in section 854 by inclusion of the phrase “register of

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854 of the principal Act.

beneficial owners” in subsection(1)(b).

Amendment of section 860 of the principal Act.

79. The principal Act is amended in section 860 by deleting the word “gave” appearing in subsection (1) and substituting therefore the word “give”.

Amendment of section 928 of the principal Act.

80. The principal Act is amended in section 928 by inserting the phrase “926 and” between the word “section” and the number “927” appearing in subsection (1).

New section

81. The The principal Act is amended by inserting a new section “973A” immediately after section “973” –

973A. Section 93A of this Act shall apply to this part with appropriate modifications

Amendment of section 975 of the principal Act.

82. The principal Act is amended in section 975 by—
(a) deleting the word “certified” appearing in paragraph (3)(a) and substituting therefore the word “notarized”;
(b) deleting the joinder “and” appearing in paragraph (3)(f);
(c) inserting a new paragraph (3)(h) immediately after paragraph (3)(g)—

(h) a statement of initial beneficial owners of the company.

Amendment of section 988 of the principal Act.

83. The principal Act is amended in section 988 by inserting a new paragraph (3) (e) immediately after paragraph (3)(d)—

(e) Where the company changes its country of domicile/registration.

Amendment of section 991 of the principal Act

84. The principal Act is amended by deleting paragraphs (3) and (4) and substituting therefore—

(3) As soon as practicable after receiving a notice under subsection (1) or (2),the Registrar shall publish in the Gazette a notice that the name of the company shall be struck off the Register at the expiry of 30 days.

(4) After the expiry of the time specified in 3 above, the Registrar shall strike the foreign company's name off the Foreign Companies Register.

New insertion.

85. The principal Act is amended by inserting the following new section immediately after section 1000—

General provisions relating to administrative penalties and offences

1000A. (1) A person shall not be subject to both the imposition of an administrative penalty and the prosecution of an offence in respect of the same act or omission under this Act.

(2) Where any provision of this Act provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to the regulations, which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of this Act.

(2) The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue from the day following that on which the default occurs.

(3) Action by the Registrar for the recovery of a penalty under this Act shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) A company shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed under this Act.

(5) For the purposes of subsection (2) the Registrar of companies shall issue a compliance notice stating

- a) the person to whom the notice applies;
- b) the provision of this Act that has been contravened;
- c) details of the nature and the extent of the non-compliance;
- d) any steps that are required to be taken and the period within which those steps must be taken;
- e) any penalty that may be imposed in terms of this Act if those steps are not taken.

(6) Upon issuance of the compliance notice, the defaulting party objecting to the demand notice shall lodge an objection challenging the actions by the Registrar in Court within 14 days from the date of issuance of the notice.

(7) In the event the defaulting party complies with the compliance notice, the Registrar shall issue a certificate of compliance in the prescribed form.

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Amendment
of section
1007 of the
principal
Act.

86. The principal Act is amended in section 1007 by inserting the following new paragraph immediately after paragraph 2(a)—

(aa) the register of beneficial owners;

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MEMORANDUM OF REASONS AND OBJECTS.