

**LEGAL ALERT:
BUSINESS
LAWS
(AMENDMENT)
(NO. 2) ACT,
2021**

INTRODUCTION

The Business Laws (Amendment) (No. 2) Act, 2021 (the “**Act**”) was assented to and came into force on **30th March, 2021**. The Act largely encapsulates provisions which ease doing business in Kenya.

About a year ago, the Business Laws (Amendment) Act, 2020 (the “**BLA**”) was passed into law for the same purpose: to facilitate the ease of doing business in Kenya especially in the wake of the Covid-19 Pandemic (the “**Pandemic**”).

In this alert, we highlight the legal amendments brought about by the Act:

1. Execution of documents by companies

The definition of the word “*signing*” under the Law of Contract Act has been expanded to include execution of documents in accordance with the Companies Act.

Pursuant to amendments by the BLA, a document is validly executed by a company if it is signed on behalf of the company by (i) two authorised signatories; or (ii) a director of the company in the presence of a witness who attests the signature. Please note that the requirement for a company seal was repealed by the BLA.

2. Industrial training levy

The Industrial Training (Training Levy) (Amendment) Order, 2020 (the “**Order**”) mandates employers to remit to the Director-General of the National Industrial Training Authority (the “**NITA**”) an annual training levy of KES 600/- per employee at the end of each financial year.

The Act has introduced a provision relating to the due date for payment of the levy. In effect, employers will be required to remit the levy to the NITA not later than the 9th day of the month following the end of the financial year. For instance, a company whose financial year end is 31st December, 2021 would need to remit the levy by 9th January, 2022.

Employers should take note of this provision to avoid non-compliance and subsequent imposition of penalties.

3. Due date for National Social Security Fund (“NSSF”) contributions

Previously, the due date for payment of NSSF was by the 15th day of the month following the month in which the deduction is made. However, with effect from 30th March, 2021, employers will need to remit NSSF on the **9th day of each month** or on such later date as the NSSF Board may determine.

We believe, this amendment aims to align the payment dates for NSSF with other statutory deductions e.g. National Hospital Insurance Fund (“NHIF”) and Pay As You Earn (“PAYE”).

4. Due date for NHIF

The Act has corrected a drafting error in the NHIF Act which was to the effect that NHIF contributions were payable on the 1st day of each month. In practice, however, NHIF payments have been payable not later than the 9th day of the month and this position has now been entrenched in the NHIF Act.

5. Virtual and hybrid meetings for companies

Previously, the Companies Act did not have provisions relating to holding virtual or hybrid general meetings and reference had to be made to the company’s articles in order to hold meetings in the said manner.

In a bid to allow companies to leverage on technology during the Pandemic, the Act has incorporated provisions relating to hybrid and virtual meetings. Companies general meetings may effectively take either of these forms: a physical, virtual or hybrid meeting. The Act defines a hybrid meeting as a meeting where some participants are in the same physical location while other participants join the meeting through electronic means. A virtual meeting, on the other hand, is defined as a meeting where all members join and participate in the meeting through electronic means.

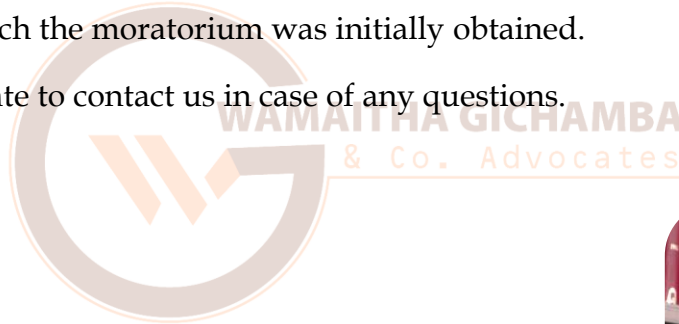
Needless to add, the Capital Markets Authority (the “CMA”) had, in 2020, published a circular on the requirements for convening and conducting virtual general meetings by issuers of securities to the public pursuant to the Capital Markets Act, the Companies Act and High Court Order where the High Court directed that issuers be allowed to hold general meetings through virtual/electronic means or any hybrid means subject to a request for a “no objection” from the CMA.

6. Insolvency

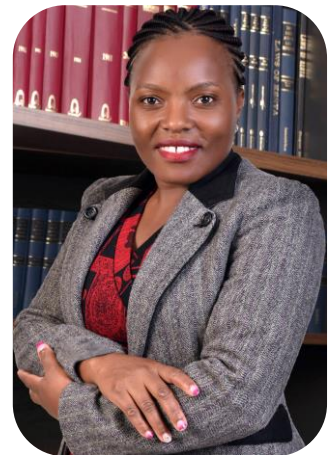
The Act has introduced a raft of amendments to the Insolvency Act, 2015. Some of the notable amendments include the following:

- a. Ineligible companies - Under the Insolvency Act, a company which, on the lodgement date, had an outstanding liability under an agreement of KES 1B or more was considered ineligible to obtain a moratorium. This requirement has now been repealed by the Act. This is a welcome move bearing in mind that companies may be financially distressed during the Pandemic.
- b. Substitution of the term “supervisor” with “monitor” - A monitor is an authorized insolvency practitioner who is appointed and consents to supervise a moratorium.
- c. Moratorium - The Act provides that a moratorium ends after 30 days from and including the day on which it takes effect, unless the moratorium period is extended. Under the Insolvency Act, a moratorium takes effect when certain documents (e.g. proposal and statement, eligibility statement, statement from the provisional monitor e.t.c.) are lodged with the Court. Notably, the Court may, on the application of the directors, extend a moratorium for a period of at least 30 days if the Court believes that the extension is desirable in order to achieve the aims for which the moratorium was initially obtained.

Please do not hesitate to contact us in case of any questions.



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