

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 6<sup>th</sup> August 2015

The House met at 2.30 p.m.

*[The Deputy Speaker  
Hon. (Dr.) Laboso in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### COMMONWEALTH PARLIAMENTARY ASSOCIATION CONFERENCE

**Hon. Deputy Speaker:** Those Members at the entrance, please settle down I have a communication to make.

Hon. Members, I wish to remind you that our Parliament will be hosting two important international conferences of the Commonwealth Parliamentary Association (CPA), Africa Region. The first one, the 6<sup>th</sup> Commonwealth Women Parliamentarian Conference (CWP), is already underway at the Safari Park Hotel, Nairobi, and will be ending on 9<sup>th</sup> August, 2015.

The second conference, the 46<sup>th</sup> CPA, Africa Region Conference is scheduled to take place next week, from 9<sup>th</sup> to 15<sup>th</sup> August, 2015, at the same venue.

Hon. Members, it is important to know that over 200 members in the National Assembly are members of the CPA, Kenya Branch. You are all, once again, invited to both conferences. Her Excellency the First Lady of the Republic of Kenya will be officially opening the CWP conference on Friday, 7<sup>th</sup> August, 2015. All Members, especially women Parliamentarians are encouraged to attend.

On Tuesday, 11<sup>th</sup> August, 2015, His Excellency the President of the Republic of Kenya will open the 46<sup>th</sup> CPA Conference. You are all welcome to the opening ceremony and, indeed, on all other days as the Conference offers an opportunity to showcase our expertise in hosting international conferences.

Thank you.

#### PUBLIC ACCOUNTS COMMITTEE/AUDITOR-GENERAL MEETING

Hon. Members, I have a second communication on the Public Accounts Committee's meeting with the Auditor-General.

Hon. Members, I wish to inform the House that I have received a letter from the Chairperson of the Public Accounts Committee of the National Assembly which communicates that the Committee has invited the Auditor-General to make a presentation on the 2013/2014 Financial Year Audited Accounts of the Government of Kenya and highlight measures being

pursued to guarantee prudent use of public funds. The Committee further seeks the indulgence and presence of Members of the National Assembly during the aforementioned meeting.

Therefore, I wish to invite all interested Hon. Members to the PAC meeting with the Auditor-General on Thursday, 13<sup>th</sup> August, 2015, at 10.30 a.m. in the Main Chamber of the National Assembly.

Thank you.

## PETITION

### DISCRIMINATION AGAINST AKORINO STUDENTS

**Hon. Deputy Speaker:** Again, Hon. Members, settle down. I have a petition to present. The Members at the entrance, I have a petition to present. This is one conveyance of a petition on the discrimination of *Akorino* students in some public secondary schools for wearing headscarves.

Hon. Members, Standing Order 225(2)(b) requires that the Speaker reports to the House any petition, other than those presented through a Member. I, therefore, wish to report that I am in receipt of a petition from the *Akorino* Students Association regarding alleged discrimination of *Akorino* students by the management of some public secondary schools in the country for wearing headscarves.

Hon. Members, the petitioners have highlighted a number of incidences where *Akorino* students were denied admission in some public secondary schools, forced to remove headscarves which are part of their religious regalia or expelled from schools for failure to comply with the requirements barring them from wearing headscarves in some schools.

The petitioners are, therefore, praying that the National Assembly through the Departmental Committee on Education, Research and Technology:-

1. Enacts a law to:-

- (a) prohibit the management of public secondary schools from denying any student admission or expelling a student from school on account of their religious wear; and,
- (b) clearly prescribes disciplinary action that shall be preferred upon school heads and/or management that engages in such discriminatory practices.

2. Makes any other recommendations that may be deemed fit in redressing the plight of affected students.

Hon. Members, pursuant to the provisions of Standing Order No.227(1), I now commit this petition to the Departmental Committee on Education, Research and Technology for consideration.

Thank you.

I can see a few Members who want to make some observations, and that is in order, going by our Standing Orders as long as it does not take more than half an hour. Where are you placing your interventions for comments on the petition that I have just read out? Hon. Nassir is the first one on my list.

**Hon. Nassir:** Thank you very much, Hon. Deputy Speaker. I think the *Akorino* Students Association has come at a very timely period. The Committee on Education, Research and Technology, when I presented a similar petition on behalf of the students of Bura Girls,

confirmed that they were going to look at this problem holistically and this may be just one thing to add to that petition.

The law is very clear. Right now, they have requested in their petition that it should be made illegal for any student to be suspended or expelled. It is already illegal for any student to be expelled based on their religious background and religious discrimination. The only thing I would be requesting from the Departmental Committee on Education, Research and Technology, is if in their final report they do not put that as a recommendation, I will be coming up with that amendment.

The punitive measures for a person who either physically or mentally torments a child, which includes discriminating against religious background, is being liable to 6 months in jail or Ksh.100,000 penalty. We need to increase that fine to a couple of millions and maybe 10 years imprisonment. It is only through that, that the principals of those schools will bear responsibility for the errors that they are making and what they are subjecting our children to.

Thank you very much, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Sakaja, what is your point of order? Members are now increasingly not having their cards with them. Hon. Members, it is a requirement. Remember we will not allow anybody without a card to vote should there be a division. So, if you have misplaced yours pay Kshs.2000 so that you can get a replacement.

**Hon. Sakaja:** On a point of order, Hon. Deputy Speaker. I have not misplaced my card. I just want to rise on a point of order following the petition---

**Hon. Deputy Speaker:** I do not think we are getting enough volume.

**Hon. Sakaja:** I will try and speak louder. I am a bit taller than this microphone. Following the petition that you have just read out, there is a matter that I have raised before about forwarding issues to committees. If you look at our Standing Orders, you will realise that different committees have different mandates. I really commiserate with the children who are facing discrimination based on religious convictions.

Standing Order No.214(c) on the Joint Committee on National Cohesion and Equal Opportunity states that one of the mandates of the Committee is to monitor and promote measures designed to enhance equalisation of opportunities and improvement in the quality of life and status of all persons, including persons marginalised on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground. The mandate of the Committee is to investigate, inquire into and report on all matters relating to discrimination or marginalisation of the persons.

Hon. Deputy Speaker, if you look at the mandate of the Departmental Committee on Education, Research and Technology, you will find that in as much as it advances issues of education, the matter referred to the Committee is not a matter of education but a matter of discrimination on religious grounds. It does not follow how that issue, which is one of the issues my Committee is dealing with, has been forwarded to the Departmental Committee on Education, Research and Technology. Discrimination can take place in a school, hospital or a place of work. If it takes place at the airport, is it a matter that goes to the Departmental Committee on Transport, Public Works and Housing? It is not a transport issue. This is not an education issue but a matter of religious discrimination. I urge the Clerks, through your office, to forward the right issues to the right committees.

Recently, there was a matter at the Senate of ethnic temperatures at Moi University which was moved to the Departmental Committee on Education because it happened in a university

while it is a matter of cohesion. So, Hon. Deputy Speaker, please give us guidance on that. That matter falls squarely under the Joint Committee on National Cohesion and Equal Opportunity.

Thank you.

**Hon. Deputy Speaker:** I hear you, Hon. Sakaja. I completely hear you and I know that this is a matter that you have been consistently raising. Because this was a specific school that has been mentioned, allow the two Committees to hold a joint session on this matter. However, in future, I wish to ask our Clerks to look at the contents of a petition. Do not just look at the Departmental Committee that oversees it. Just look at the actual contents of a petition to guide us in deciding which Committee should look at it. So, for this one, let us do a joint sitting of the two Committees.

I thought you have finished, Hon. Sakaja. I want to give somebody else a chance. We only have half an hour.

**Hon. Sakaja:** Hon. Deputy Speaker, thank you for the guidance. The reason I am reinforcing the statement is that in addition to looking at that specific school, the reason why it should go to the relevant Committee is because it will look generally at the policy around discrimination. This is because there are many other schools that have not been able to bring such petitions. So, we stand guided. Thank you for that.

**Hon. Deputy Speaker:** Hon. Chrisantus Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Deputy Speaker. This is a serious matter. We want to condemn any form of discrimination, whether it is based on religion, gender, tribe, colour or whatever the case. As you clearly put it, what Hon. Sakaja has said is true. It falls under that Committee. However, we have the bigger picture of the schools. I encourage my brother to work jointly with the Departmental Committee on Education, Research and Technology because we have seen other cases of discrimination which come in the form of disciplinary cases to do with a student or pupil.

Let us have a joint sitting for purposes of looking at it holistically. I had a proposal of coming up with an *ad hoc* Committee to look into that but because the Committee exists and I know Hon. Sakaja has what it takes, it is, indeed, critical that you must be together with the Departmental Committee on Education, Research and Technology so that you can look at this issue and come up with recommendations that are going to sort it out once and for all.

Thank you.

**Hon. Deputy Speaker:** Hon. Ali Rasso, is it on the same matter?

**Hon. Dido:** Thank you very much, Hon. Deputy Speaker. I rise to support this petition. As my colleagues who have spoken before me have said, this is a weighty issue. As Hon. Sakaja has said, it is wider than just education.

There are cases of Muslim students who are not allowed to put on *hijabs*, which their religion allows, or to put on a long dress, which is what the religion says. This petition addresses Article 19 of our Constitution on rights and fundamental freedoms.

As we know, the *Akorino* religion is one of the oldest faiths in the Republic of Kenya. The youngsters who go to schools or colleges actually do not go and get converted there. They are actually members of that belief before they join high schools.

Further to that, the freedom of conscience, religion, belief and opinion is being violated in contravention to Article 32 of the Constitution by denying them the right of putting on their traditional regalia in those schools.

I beg to support.

**Hon. Deputy Speaker:** Yes, Hon. Richard Onyonka.

**Hon. Onyonka:** Asante sana, Mhe. Naibu Spika. Mimi pia ningependa kuunga mkono jambo hili. Ningependa kuwasihi wale ndugu zetu ambao wako katika kamati hizi ambazo zitakuwa zinachunguza mambo ya jinsia, elimu na utengamano wa Wakenya. Ningependa kusema kwamba lazima tuangalie jambo lote la ubaguzi katika nchi yetu ya Kenya kikamilifu. Lazima tuanze kujiangalia kama Wakenya vile tunawabagua dada zetu na wenzetu kijinsia, kidini na kikabila. Hivyo ndivyo tutakavyojaribu kusuluhisha shida iliyoko katika nchi yetu ya Kenya.

Lazima tujiulize sisi wenyewe wakati tutaanza kujadili Mswada huu na tutaanza kuyaangalia na kuyazungumzia mambo yale yanayotusumbua katika nchi hii kuhusu ubaguzi tujiulize sisi kama viongozi kama tunataka nchi moja ambayo itakuwa na heshima kwa kila mtu ama nchi ambayo itakuwa inabagua watu ovyo ovyo.

Asante, Mhe Naibu Spika.

**Hon. Deputy Speaker:** Hon. Kabando wa Kabando

**Hon. Kabando wa Kabando:** Thank you, Hon. Deputy Speaker. The Constitution of the country is very clear. While we encourage it very strongly because it is very evident that many institutions--- Now you see children, students and young people have a lot of trust in the National Assembly to resolve matters in a judicious manner. Because the Constitution is very clear about the right of choice, association, speech and so on, perhaps as the two Committees, as directed by you, Hon. Deputy Speaker, deal with this matter it may also be important to consider the role of the Executive, particularly the parent Ministry in ensuring that the right directives and communication are sent to all the institutions. This is because the other side of this matter is a problem that affects public institutions and not private institutions.

If you go to private academies, colleges, high schools and primary schools, you will find that these matters are being handled in a very judicious manner because the administrators and proprietors are very sensitive to retain every population within the institutions.

The issue of uniforms was captured in Prof. Kilemi Mwiria's Report on school fees. According to the Report, this is a matter that needs review. Since that Report has been taken to the Departmental Committee on Education, Research and Technology and presented to the President of the country, I think that some of the documentation can assist to reach firm decisions so that matters of administrative justice are also executed at the lowest level. This is so as to minimize wastage of resources and enable focus on compliance of the Constitution. We cannot talk about the most progressive Constitution in the world, yet we are talking about retrogression in terms of basic administrative justice for those who deserve.

Thank you for the permission.

**Hon. Deputy Speaker:** Hon. Nicholas Gumbo! Hon. Members I believe our half hour is slowly coming to an end. Remember it is just about observations on the petition.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, I wish to thank you for giving me the opportunity to pronounce myself on this matter. Issues of discrimination in whatever form are really very important. Those of us who have suffered discrimination in our earlier lives know how painful it can be. Even as the Committee looks into this matter, I agree with my good friend, Hon. Onyonka, that we should take a holistic approach. However, as we take the holistic approach, I think it is also important that what goes into the records of this House should also be accurate.

I have heard it before that some Catholic schools are forcing students to take the Holy Communion - that cannot be true. Those who take the Holy Communion in the Catholic Church are known. Even practising Catholics have to go through certain stages before they are allowed to take the Holy Communion.

If we are to help the country, let the formatting of the petitions be accurate so that we reflect what actually happens because if we give the wrong impressions, we could also be inflaming passions unnecessarily.

There are many people I know who are members of the Catholic Church but they are barred from taking the Holy Communion on certain grounds. So when we bring petitions to this House, accuracy is important, otherwise the aim of that petition will also be lost.

Otherwise, I thank you, Hon. Deputy Speaker.

**Hon. Francis Waititu:** Thank you, Hon. Deputy Speaker. As I also support the petition from the *Akorino* students, it is not only about the headscarf, but also about turban. Many *Akorino* people have suffered when it comes to getting identity cards. This has been happening since Independence and the sect members have suffered.

In my constituency, which is cosmopolitan, I also have members of the Luhya community who also put on headscarf. When these people try to get identity cards they are not allowed by the chiefs. It is time now we allowed freedom of worship. We should also allow members of these churches to put on scarfs. There was a case in my constituency---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! The consultations are far too high.

**Hon. Francis Waititu:** There was a case in my constituency where eight girls were sent home because of putting on headscarf, since they are *Akorino*. It is now time for the national Government to support the wearing of turbans.

I support.

**Hon. Serut:** Thank you. Hon. Deputy Speaker. I have listened to the petition. It is not about discrimination on the basis of religion. If I listened carefully, it is about wearing of the turban. This goes back to the genesis of the uniform. It was about uniformity. The issue of what one should wear should not be free for all. I want to start with our own prayer.

Our prayer does not take any direction. I think my opinion is, let us have uniformity in whatever we do. If one feels his or her daughter cannot go to a school where he or she is not allowed to put on certain regalia, they should not join that school. It is my opinion that such schools should be left to exercise their own rights because it is part of the discipline of those particular institutions.

Thank you.

**Hon. Deputy Speaker:** Hon. Members, please, feel sufficiently represented by the Members who have spoken. We want to urge our two Committees to take this matter extremely seriously. Most students have been affected. Please, make very clear recommendations that can be used by the Ministry of Education, Science and Technology to give guidelines on this matter. We need something that can be applicable across the country. These are just examples that we have been given.

Hon. Members, before we move on to the next Order, I want to recognize the presence of Moi Marakwet School from Keiyo North Constituency, Elgeyo Marakwet County.

We also have Shelvesto Musal School in Laikipia North Constituency, Laikipia County. We also have Holy Family Academy in Chepalungu Constituency, Bomet County; Mercy Girls Secondary School, Kipkelion West Constituency, Kericho County and St. Jacobs Education Centre in Turbo Constituency, Uasin Gishu County. Give them a round of applause and welcome them. You are all welcome to the National Assembly.

*(Applause)*

### PAPERS LAID

**Hon. A.B. Duale:** Thank you, Hon. Deputy Speaker. I beg to lay the following Papers on the Table of the House today, Thursday, 6<sup>th</sup> August 2015:-

The Commission on Administrative Justice Biannual Reports for the period January to June 2013 and July to December 2014 (Pursuant to Section 8 of the Commission on Administrative Justice Act, 2011)

The Annual Report and Financial Statements of the Competition Authority of Kenya for the year ended 30<sup>th</sup> June 2014.

The Annual Report and Financial Statements of Machakos University College for the year ended 30<sup>th</sup> June 2013 and the Certificate of the Auditor General therein.

The Annual Report and Financial Statements of the Ewaso Ng'iro South River Basin Development Authority for the year ended 30<sup>th</sup> June 2013 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Machakos University College for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** We also have a Paper to be tabled by the Chairman of the Departmental Committee on Lands.

**Hon. ole Sakuda:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House, today Thursday, 6<sup>th</sup> August 2015:-

Reports of the Departmental Committee on Lands on:

- (i) the Sirikwa Settlement Scheme;
- (ii) land conflict in Kedong Ranch; and,
- (iii) the petition by Maanoni Dam displaced persons on delayed land and crop compensation.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay. Let us move on to the next Order.

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON SIRIKWA SETTLEMENT SCHEME

**Hon. Deputy Speaker:** I believe Hon. Sakuda has notices of Motion to give.

**Hon. ole Sakuda:** Thank you very much, Hon. Deputy Speaker.

I beg to give notices of the following Motions:-

THAT, this House adopts the Report of the Departmental Committee on Lands on Sirikwa Settlement Scheme, laid on the Table of the House on Thursday, 6<sup>th</sup> August 2015.

#### ADOPTION OF REPORT KEDONG RANCH CONFLICT

THAT, this House adopts the Report of the Departmental Committee on land conflict in Kedong Ranch, laid on the Table of the House on Thursday, 6<sup>th</sup> August 2015.

Thank you.

**Hon. Deputy Speaker:** Okay. That brings us to the end of that Order. Let us move on to the next Order.

### STATEMENT

#### BUSINESS FOR THE WEEK COMMENCING 18<sup>TH</sup> TO 20<sup>TH</sup> AUGUST 2015

**Hon. A.B. Duale:** Thank you, Hon. Deputy Speaker. Pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 18<sup>th</sup> August 2015.

The HBC met on Tuesday this week to prioritise the business of the House. Through you and without anticipating debate on Adjournment, the House is scheduled to proceed for a short recess today. Therefore, the schedule of business that I am going to give today is based on that premise.

On Tuesday, 18<sup>th</sup> August 2015, scheduled for consideration in the Committee of the whole House will be the Fisheries Management and Development Bill, 2014, and the Insolvency Bill, 2015. The House will also continue with the Second Reading of the Finance Bill, 2015 should it not be concluded today.

Other important Bills to be considered upon resumption are the Constitution of Kenya (Amendment) Bill No. 2 of 2015 by Hon. George Peter Kaluma and the Constitution of Kenya (Amendment) Bill No.3 of 2015 by Hon. Samuel Chepkong'a.

In the same week, priority will be accorded to the consideration of several pending committee Reports and the remaining Senate Bills. I, therefore, wish to urge committees to expedite the tabling of the Reports concerning these Bills to enable Members acquaint themselves with the contents of the Reports and the recommendations of the committees.

Hon. Deputy Speaker, the Constitutional Implementation Oversight Committee (CIOC) has indicated that there are 28 constitutional Bills requiring passage on or before 27<sup>th</sup> August 2015.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! You are not even listening to the very important information that the Leader of the Majority Party is trying to bring to your attention.



**Hon. A.B. Duale:** Thank you, Hon. Deputy Speaker. Hon. Cheboi and his former classmate, Hon. Kajuju are the ones who are consulting loudly.

Currently, four of these Bills have been published. They are the Legal Aid Bill, 2015; the Magistrates Court Bill, 2015; the Controller of Budget Bill, 2015 and the Constitution of Kenya (Amendment) Bill No.4, 2014. Yesterday, I signed nine other Bills which are awaiting publication. These include the Community Land Bill, 2015; the Physical Planning Bill, 2015; the Organisation and Administration of High Court, 2015; the Organisation and Administration of the Court of Appeal, 2015 and the Protection of the Ownership of Indigenous Seed and Plant Varieties Bill. Others are the Energy Bill, 2015; the Petroleum (Exploration, Development and Production) Bill, 2015; the Protection of Traditional Knowledge and Traditional Culture Expression Bill, 2015 and the Forest Bill, 2015.

Due to the delayed submission of these and other numerous Bills with constitutional timelines, it will be very difficult to meet the set deadlines. As such, the HBC has agreed to prioritise a Motion seeking extension of the constitutional timeline of 27<sup>th</sup> August 2015.

Regarding the Cabinet Secretaries (CSs) appearing before the committees on Tuesday, 18<sup>th</sup> August 2015, the schedule is as follows:

1. The CS for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security at 10.00 a.m. to answer questions from Hon. George Oner, Hon. Sunjeev Birdi, Hon. Kigo Njenga, Hon. Malulu Injendi, Hon. Elisha Busienei, Hon. Ferdinard Wanyonyi and Hon. Joseph Kiuna.

2. The CS for Labour, Social Security and Services will appear before the Departmental Committee on Labour and Social Welfare at 10.00 a.m. to answer questions from Hon. (Maj). Marcus Muluvi, Hon. Francis Waweru Nderitu, Hon. David Wafula and Hon. James Mwangi Gakuya.

3. The CS for the National Treasury will appear before the Departmental Committee on Finance, Planning and Trade at 11.30 a.m. to answer questions from Hon. Benson Mutura, Hon. Timothy Wanyonyi, Hon. (Dr.) Wilber Ottichilo and Hon. Abdulswamad Shariff Nassir.

Finally, Hon. Deputy Speaker, the HBC will reconvene on the Tuesday, 18<sup>th</sup> August 2015, at the rise of the House, subject to the adjournment of the House today to consider business for the rest of the week. I now wish to lay the Statement on the Table of the House.

Thank you.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Deputy Speaker:** Thank you, the Leader of the Majority Party. I will ask the House to give us some time to conclude. We have done a lot of business very well in concluding many of the sessional papers but we have not been able to conclude them by putting the Question. So, I will ask you to be patient for a while so that we can dispense of this business. Anybody who is at the Bar or on the way coming in, please get seated so that we dispense of this business.

Next Order.

## MOTIONS

ADOPTION OF SESSIONAL PAPER ON GOVERNANCE,  
JUSTICE, LAW AND ORDER SECTOR POLICY

THAT, this House adopts Sessional Paper No.4 of 2014 on the Governance, Justice, Law and Order Sector (GJLOS) Policy, laid on the Table of the House on Thursday, 12<sup>th</sup> February, 2015.

*(Hon. Chepkong'a on 6.8.2015)*

*(Resumption of Debate interrupted on 6.8. 2015 – Morning Sitting)*

**Hon. Deputy Speaker:** The Member at the Bar, can you settle down? Hon. Members, I want to put the Question.

*(Question put and agreed to)*

RATIFICATION OF CONVENTION ON SUPPRESSION OF UNLAWFUL  
ACTS RELATING TO INTERNATIONAL CIVIL AVIATION

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Convention on the Suppression of Unlawful Acts relating to International Civil Aviation and the Protocol Supplementary to the Convention for Suppression of Unlawful Seizure of Aircraft, laid on the Table of the House on Thursday, 18th June 2015, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of:-

- (i) The Convention on the Suppression of Unlawful Acts relating to International Civil Aviation; and
- (ii) The Protocol Supplementary to the Convention for suppression of Unlawful Seizure of Aircraft.

*(Hon. Kamanda on 6.8.2015)*

*(Resumption of Debate interrupted on 6.8.2015 - Morning Sitting)*

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Order Members! I had asked that you indulge us by staying in the Chamber until we finish before you retreat to committees.  
Next Order.

## BILLS

### *Second Readings*

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
SENATE BILL

*(Hon. Chepkong'a on 6.8.2015)*

*(Resumption of Debate interrupted on 6.8.2015 - Morning Sitting)*

**Hon. Deputy Speaker:** Hon. Members, this is a Bill that was debated and completed earlier. What remained was just putting the Question. In essence, this is a Senate Bill, which says that the county assembly is not fully constituted before the nominated female members are present.

I want to put the Question.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

THE COMPANIES AND INSOLVENCY LEGISLATION  
(CONSEQUENTIAL AMENDMENTS) BILL

*(Hon. A.B. Duale on 5.8.2015)*

*(Resumption of Debate interrupted on 5.8.2015-Afternoon Sitting)*

**Hon. Deputy Speaker:** Hon. Members, again, this is a Bill that is consequential to the passage of the Companies and the Insolvency Bills which will be completed soon, but cannot be operationalised without this legislation.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

THE SPECIAL ECONOMIC ZONES BILL

*(Hon. A.B. Duale on 5.8.2015)*

*(Resumption of Debate interrupted on 5.8.2015 – Afternoon Sitting)*

**Hon. Deputy Speaker:** Hon. Members, you will notice that we have skipped Order No.12, but that is because it was completed yesterday. We completed the entire Bill including putting the Question.

So, we have moved to Order No.13.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

#### IN THE COMMITTEE

*[The Deputy Speaker  
(Hon. (Dr.) Laboso) left the Chair]*

*[The Temporary Deputy Chairman  
(Hon. Cheboi) took the Chair]*

#### THE COMPANIES BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Members! We are considering the Companies Bill (National Assembly Bill, No.22 of 2015). We are in the Committee of the whole House as you are well aware and we will move pretty fast. It is a big Bill. We will start quickly and move on.

*(Clauses 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,  
16, 17, 18, 19, 20, 21, 22, 23,  
24 and 25 agreed to)*

#### Clause 26

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended in Clause 26 by deleting the phrase "section 7" and substituting therefor the phrase "section 12".

The import of this amendment is that we are seeking to correct the cross-referencing which was an error. This is purely removal of an error in the phrase "section 7" and substituting therefor the phrase "section 12", which ought to be Clause 12.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see some requests. I do not know if they are interested in speaking to this one. Can we start with Hon. Chanzu? Do you want to speak to this one or you are waiting for the next one?

**Hon. Chanzu:** I am waiting for the next one.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Rarieda, Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Chairman. The amendment is correct. I have also read the Bill and the cross-referencing as it appears in the Bill is not correct. The proposed amendment gives the true meaning of cross-referencing.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Lastly, we will have the Member for Nakuru Town East. Do you want to speak to this one? I can see you are not prepared.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 26 as amended agreed to)*

*(Clauses 27, 28, 29, 30, 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 and 61 agreed to)*

Clause 62

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to move:-

THAT, the Bill be amended in Clause 62 by deleting paragraph (e).

Hon. Temporary Deputy Chairman, we are seeking to remove the extra paragraph that is contained in Clause 62 as it is a repetition. We are just deleting that.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to the Hon. Member for Kitui Central, Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairman. I want to support the deletion as the Departmental Committee Chair has put it that it has been taken care of by another section.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, Hon. Kaluma?

**Hon. Kaluma:** I am not speaking to that.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. I think you are not ready for that.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 62 as amended agreed to)*

*(Clauses 63, 64, 65, 66, 67, 68, 69, 70,*

71, 72, 73, 74, 75, 76 and 77 agreed to)

Clause 78

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 78 by deleting sub-clause (6).

Hon. Temporary Deputy Chairman, we are seeking for deletion of sub-clause (6) of Clause 78 because it is superfluous. The Committee feels that the court has the discretion to grant reliefs and remedies it deems fit under the circumstance. Therefore, it is not for the legislation to prescribe what the court should order. The court has sufficient latitude to prescribe any remedies, and to issue any orders it deems fit under the circumstances. In our view, sub-clause (6) is redundant.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the opportunity to only two Hon. Members, starting with the Member for Garissa Township, Hon. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I am the Leader of Majority Party.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Duale, I knew that, but I did not realise you wanted to contribute in that specific capacity.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I totally agree with the Chairman because sub-clause (6) is completely directing a judge on what to do. It is like putting a judgment of either sort in the process of legislation. I want to thank my good friend and good lawyer for seeing that.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Kaiti, you want to speak to this one?

**Hon. Makenga:** Yes, Hon. Temporary Deputy Chairman. I support the amendment as the Chair of the Departmental Committee has proposed that sub-clause (6) is superfluous. I have no problem having it amended.

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, Hon. (Eng.) Gumbo.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Chairman. While I have no particular objection, I thought the Chair of the Departmental Committee should have clarified the difference between sub-clauses (5) and (6). If sub-clause (6) appears to be directing the court, why is sub-clause (5) not directing the court, if the deletion was for any other ground other than the fact that it appears superfluous and to be directing the court? I believe it would be in order---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Eng.) Gumbo, you have made your point. Let us hear what the Chair of the Departmental Committee has to say about sub-clauses (5) and (6).

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, if you look at sub-clause (5), you will realise that it states that if the court considers appropriate to do so, it may further order or direct the purchaser to do all that. But sub-clause (6) goes beyond that and directs the court on what orders to issue and the amendments to make with respect to articles and many other things it is supposed to do. We felt that is inappropriate. It is too unwilly.

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Eng.) Gumbo, what is your point of order?

**Hon. (Eng.) Gumbo:** The Chair of the Departmental Committee seems to be misleading the House. Even sub-clause (5) talks about directing. So, if it is directing in both sub-clauses, why would he then purport to say that sub-clause (6) is directing the court and sub-clause (5) is not? If you read the two sub-clauses, you will find that the wording is almost the same.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Eng.) Gumbo, if that description was not given, what would be the net effect? Would you be opposing it? If you were, then you are free to do so.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I would not want to oppose but this is a House of records. It is good for us to put things in the proper perspective. Sub-clause (6) appears to be directing the court. That is exactly what sub-clause (5) appears to be doing.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Eng.) Gumbo, unfortunately I did not catch your eye at that particular point in time. I have already put the Question.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 78 as amended agreed to)*

*(Clauses 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 and 93 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I want to take this opportunity to introduce students and teachers from Kamagut Secondary School from Chepalungu Constituency, Bomet County. You should feel welcomed to this august House.

*Clause 94*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 94 by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) Except in so far as the regulations otherwise provide, a company shall ensure that its register of members is—

- (a) kept at its registered office; and
- (b) lodged with the Registrar.”

The import of this amendment is to ensure that a company also lodges its register of members with the Registrar of Companies. Initially, that was not a requirement. We feel that that requirement ought to be there for purposes of the public.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see quite a lot of interest in this one. So, I will give a chance to three Members. Let us start with the Member for Rarieda Constituency. Actually, I should have gone to another Member who has not spoken.

Well, the Member for Rarieda, you are lucky. I was thinking that I was going to give the chance to Members who have not spoken this afternoon only but let us hear from you.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I am not a lawyer but this thing, with all due respect to the Chairman of the Departmental Committee on Justice and Legal Affairs, looks unnecessarily verbose. What would be the problem with just having one sub-clause because he is not deleting anything? He is retaining the clause and adding another one. What is the purpose of making it---

*(Hon. Chepkong'a consulted loudly)*

I wish I could get the attention of the Chairman of the Committee. I am addressing the Chairman. For me, this is not good drafting because what we are saying is that in addition to being kept at the registered office, it should also be lodged with the Registrar of Companies. Why do you have to add another sub-clause so that you make it unnecessarily verbose?

**The Temporary Deputy Chairman** (Hon. Cheboi): The difficulty I am having with you, the Member for Rarieda Constituency is that you seem to be seeking clarifications at this point in time.

**Hon. (Eng.) Gumbo:** No, I am not.

**The Temporary Deputy Chairman** (Hon. Cheboi): I would be more comfortable if you made a decision to either support or oppose because you see these are issues which have been in public domain. This is something that has been given to you. So, you must have made your mind on whether you want to support or oppose by now. If you really are criticizing that specific part of the Bill, feel free to oppose. It will be part of your business.

**Hon. (Eng.) Gumbo:** We have only seen these amendments for the first time. What I am saying is that it does not look like good drafting to me. This is because it is talking about deleting when that sub-clause is actually retained. So, why can we not just say "and"? I mean add to that sub-clause.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, let us hear the rest of the membership. Let me hear from the Member for Narok West, Hon. Ntutu.

**Hon. ole Ntutu:** Thank you, Hon. Temporary Deputy Chairman. I just wanted to support the amendment. I think it is good practice all over the world that members are registered and the register lodged with the Registrar of Companies. It is a good idea instead of just having it in the company's offices.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. I will give the last slot to the Leader of the Majority Party but let me have Hon. Njuki of Chuka/Igambang'ombe before then. I see that it is mostly those to the right of the Temporary Deputy Chairman who want to contribute on this.

**Hon. Njuki:** Thank you, Hon. Temporary Deputy Chairman. In this case, the records of registered members of a company are very critical because that part gives information of exactly who is in charge of this company.

If you look at what has been happening at our registry here when you apply for company registration, sometimes a whole file disappears and it becomes very difficult to reconstruct that



file if you do not have any document that was authenticated by the same Registrar of Companies. Double entry in terms of keeping records will really help so that in the event that one of the records is missing, then the other can be relied on.

Thank you, Hon. Temporary Deputy Chairman.

*(Hon. Kang'ata moved to the Dispatch Box)*

**The Temporary Deputy Chairman** (Hon. Cheboi): You speak from where you are, Hon. Kang'ata. The microphone is with you. I do not know what you are looking for here.

**Hon. Kang'ata:** Thank you, Hon. Temporary Deputy Chairman. I propose that the Chairman or the Mover of this Bill makes this clause better by removing the following expression: "Except in so far as the regulations otherwise provide..." The reasons are that I feel the regulations may be published in a manner that defeats the purpose for this entire clause. Therefore, Kenyans will fail to benefit from the intention that is captured by this thing. It is very important but the way it is drafted and the way the first expression is provided there, it can be used to defeat these two intentions. You have a situation where the register is either kept in the registered office only or with the Registrar of Companies.

The only thing I want to tell the Chairman is the fact that I am a Member of the Committee. He should not constrain me from making my contribution.

**The Temporary Deputy Chairman** (Hon. Cheboi): Actually, I was going to say that I would least be expecting you to make such a comment. This is because being a Member of that Committee, you would have been able to put some thought at the Committee but, you have made your point, Member for Kiharu.

**Hon. Kang'ata:** The new idea came into being later.

**The Temporary Deputy Chairman** (Hon. Cheboi): As you said, maybe you have been touched lately and that is why you brought it.

Now, I will give a chance to one more Member than the Leader of the Majority Party. Hon. Grace Kiptui of Baringo County, do you want to speak on this one? I see she is not there. She was here. She has just pressed the button. Let me give this chance to Hon. Ayub Savula.

**Hon. Angatia:** Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment in Clause 94 for the following reason. Keeping a register of members or directors of a company in a registered office will help eliminate issues of briefcase registered companies.

In the media for example, you find a registered newspaper with a list of directors but, when you go and search for the list of directors when you want to file a suit in court, you will not find them. They operate as briefcase companies on the streets. If they keep a list of registered members and directors in their registered office, it would be easier for any party who is aggrieved to serve them and sue them in a court of law.

This amendment is very important and it will help us. I support it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Let us lastly have the Leader of the Majority Party and then we will make a decision.

**Hon. A.B. Duale:** Thank you, Hon. Temporary Deputy Chairman. Before I go to the amendment, let me save time because Members can bring further amendments to the Chairman's amendment. If somebody wants to improve on the amendment of the Chairman of the Committee, he or she can move a further amendment in consultation.

This is a very important amendment the Chairman of the Committee has brought. Why? One, is to keep the records at the registered office and, two, update your records at the Registrar of Companies. This is part of the transparency and accountability that this Bill's objective is all about.

We brought this voluminous Companies Bill with the objective to support us in the war against corruption and to support us in running business. It is good that the Registrar has now automated the system. It is easier even for registered companies to update their records with the Registrar.

I totally support, and I think we need to move.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 94 as amended agreed to)*

#### Clause 95

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, I thought you have an amendment to this clause.

**Hon. Chepkong'a**: Yes, Hon. Temporary Deputy Chairman. I was still recovering from the clapping.

**The Temporary Deputy Chairman** (Hon. Cheboi): Which people were clapping, Hon. Chepkong'a? You are out of order because you are not supposed to hear any clap.

Proceed.

**Hon. Chepkong'a**: Thank you, Hon. Temporary Deputy Chairman.

I beg to move:-

THAT, the Bill be amended in Clause 95 by inserting the words "or imprisonment for a term not exceeding two years, or to both" in Sub-Clause (5).

We are seeking to introduce a penalty, which includes imprisonment and to state the number of years for imprisonment if one fails to pay the fine. We do not want people to fail to keep registers because they will be engaged in other business where we do not know the shareholders and directors. So, we will be dealing with companies which are operating incognito.

So, the reason why we are saying the offence should attract a penalty which should include imprisonment is that if you fail to pay the Kshs500,000 the courts should sentence you to imprisonment. There are people who may not be able to pay the Kshs500,000. Such people should be imprisoned or both circumstances may apply.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see some interest in this amendment. I will start with the Member for Westlands. Hon. Wanyonyi, do you want to speak to this amendment?

**Hon. Wetang'ula:** Yes, Hon. Temporary Deputy Chairman. I support the amendment because the penalty will deter crooks who move around with briefcase companies. This amendment is very important.

I support it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Kenta, the Member for Narok North.

**Hon. ole Kenta:** Hon. Temporary Deputy Chairman, I object to this amendment because this is a civil offence. If we import provisions from criminal jurisdiction into such activities, it will be a dangerous precedent. We should object to it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Mbui. Do you want to speak to this amendment, the Member for Kathiani?

**Hon. Mbui:** Yes, Hon. Temporary Deputy Chairman. I do not support this amendment. The financial penalty was good enough. My problem is that when you introduce a jail term for a mistake like failing to keep a register or not lodging the register with the Registrar, it can be abused by some law enforcement officers. It can also be a way through which corruption can be introduced. So, the jail term is not a good idea. Even if the Chairperson chooses to have it, let it be as an alternative and not both of them. If someone is unable to raise the fine then that is the time the jail term would apply. Both penalties should not apply at the same time.

**The Temporary Deputy Chairman** (Hon. Cheboi): It is prudent for Members to make a decision now. I will give Hon. Chepkong'a an opportunity to probably clarify before the Members can make their final decision. Members, let us be keen on this because there are issues that need to be clarified.

**Hon. Chepkong'a:** I thank you, Hon. Temporary Deputy Chairman. This sub-clause deals with criminal elements. We are dealing with a crime and not a civil matter. We should not confuse the two. The sub-clause talks about conviction, which means the offence is criminal and not civil. A civil matter is where you are sued but there is no fine. So, when you only prescribe a fine and exclude imprisonment, you are not giving the courts discretion. It is not a must that the courts imprison you. The courts can decide that, depending on the gravity of the offence, you pay the Kshs500,000 fine or Kshs20,000 or Kshs20,000. You give the discretion to the courts. However, this is a criminal matter and not a civil one.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is fine, Hon. Chepkong'a. We need to move quickly.

*(Question, that the words to be inserted  
be inserted, put and negatived)*

*(Clause 95 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): The clause is lost. We will proceed.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. I get surprised when Members agree with the fine and then lose the entire clause.

**The Temporary Deputy Chairman** (Hon. Cheboi): It is the other way round, Hon. Chepkong'a. The Members who agreed refused to protect their fold when they had already passed the amendment. That is why Members must be very keen. We cannot put a Question in

vain. We put a Question so that Members can make a decision. Members should be keen, including the Chairperson and some Members of the Committee who I see close by.

Proceed Chairperson.

*Clause 96*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 96 of the Bill be amended—

(a) in sub-clause (1) by inserting the word “public” immediately before the word “company”; and

(b) in sub-clause (2) by inserting the word “public” immediately before the word “company” wherever it occurs.

We are seeking to insert the missing word which is a requirement for a public company. It is not for a private company.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to only two Members to speak to this amendment, starting with the Member for Mbooni, Hon. Kisoi.

**Hon. Kisoi:** Hon. Temporary Deputy Chairman, I support the amendment though I wanted to speak to Clause 95.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I support the amendment. The main purpose of the amendment is to capture the fact that we are speaking about public companies.

I support.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 96 as amended agreed to)*

*Clause 97*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, you have an amendment to this clause.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman.

I beg to move:-

THAT, Clause 97 of the Bill be amended—

(a) in sub-clause (1)—

(i) by inserting the words “or decline it by giving sufficient reasons in writing” at the end of paragraph (a);

(ii) in paragraph (b) by deleting the words “for an order under subsection (3);

(b) in sub-clause (2) by deleting the words “at the hearing of an application for an order under subsection (3)” and

(c) by deleting sub-clauses (3), (4), (5) and (6).

This will allow companies to decline request for information by giving sufficient information and remove references to established court procedures so that you do not need to go to court to seek for the reasons.

We are obligating the companies to give reasons in writing so that if you wish to know why certain actions were taken, you will find those reasons already included in the register kept by the company.

I thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members a chance to quickly contribute starting with the Member for Meru.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Temporary Deputy Chairman. I support that amendment because as we have been doing in passing the Fair Administrative Law, it allows persons to know decisions that have been made by corporations so that they understand if those decisions are prejudicial or not.

Also if one is able to get the reason why a particular issue has been rejected or has been accepted then it will save on time and cost. So, this is a good amendment that should be supported.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Let us have the Member for Embakasi West, Hon. Theuri.

**Hon. Theuri:** I support.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Question, that the words to be left out  
be left out, put and agreed to)  
(Clause 97 as amended agreed to)*

*(Clauses 98, 99, 100, 101, 102, 103, 104, 105,  
106, 107, 108, 109, 110, 111, 112, 113, 114, 115,  
116, 117 and 118 agreed to)*

*Clause 119*

**Hon. Chepkong’ a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 119 of the Bill be amended in sub-clause (3)(b) by deleting the phrase “Insolvency Act, 2015” and substituting therefor the phrase “laws relating to insolvency”.

The reason is that you are indicating the Insolvency Act, 2015 and yet that Act has not been passed. So, we are seeking to give it a generic term. The Insolvency Bill will be passed later on.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members a chance, starting with the Member for Balambala.

**Hon. Aden:** Thank you, Hon. Temporary Chairman. I support. The Chair has clarified it very well. We should not just limit it to that Act of 2015. We should leave it open. That will allow us to bring in all the other laws and future amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Ndaragua, Hon. Nderitu.

**Hon. Nderitu:** Hon. Temporary Chairman, I also support that. It is clear from what the Chair has explained. Some of the laws we are relating to are yet to be passed. The Insolvency Bill of 2015 is in the process of being passed. So, it is good to generalise the matter.

I support.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)  
(Clause 119 as amended agreed to)*

*(Clauses 120, 121, 122, 123, 124, 125, 126,  
127, 128, 129, 130, 131 and 132 agreed to)*

*Clause 133*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the Bill be amended by deleting Clause 133.

The import of that amendment is to delete the entire Clause 133. The reason we are proposing the deletion is that the independence of the Board of the nomination committee is already provided for under the Capital Markets Act. So, to align this clause to the Capital Markets Authority, this clause needs to be deleted. It is not necessary. It is already provided for in another piece of legislation. So, it was unnecessary for us to have it here.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will also give two Members a chance. I will start with the Member for Rarieda.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, while I support the Committee's amendment, this amendment the Committee proposes to make is Part IX which is on company directors and on Division II on appointment and removal of directors. I just thought

that as much as it is provided for in the Capital Markets Authority Act it would have been neater if that reference would have made in this Bill.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give Hon. Silvance Osele a chance.

**Hon. Onyango:** I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Ntutu, on this one.

**Hon. ole Ntutu:** Thank you, Hon. Temporary Deputy Chairman. I support but I really thought that it would not hurt for Clause 133 to remain there. I got what the Chairman was telling us but I really did not see any reason to delete the whole clause.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 133 deleted)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Before we proceed, Hon. Members, I wish to introduce to you Mrs. Bibi Safeena Lotun, the Clerk of the National Assembly of Mauritius. She is currently seated at the Speaker's Row. She is in the country to attend the Commonwealth Women Parliamentarians' meeting which is part of the CPA, Africa Region Conference, taking place from tomorrow all through next week. She has been with us since Monday, 3<sup>rd</sup> August, 2015. She has already paid a courtesy call to the Clerk of the National Assembly.

On my own behalf and on behalf of Hon. Members, I wish to welcome her to the National Assembly and wish her a fruitful engagement.

Thank you.

*(Clauses 134 and 135 agreed to)*

*Clause 136*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 136 of the Bill be amended in sub-clause (1)(e) by inserting the word "or" immediately after the word "business".

We are seeking to just insert a missing word, which is "or", so that Clause 136(1)(e) reads as follows: "The person's business or occupation if any". Previously, it was reading: "The person's business occupation", which was not correct.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to two Members. Yes, the Member for Othaya.

**Hon. (Ms.) Munene:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment because "business" is not the same as "occupation".

**The Temporary Deputy Chairman** (Hon. Cheboi): We will have the Member for Kathiani on this one.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Chairman. I was waiting for the next one, but since I have got the chance, I want to say that, that makes sense. We are just making it legible for the people who read the law.

I support.

*(Question, that the word be inserted  
be inserted, put and agreed to)*

*(Clause 136 as amended agreed to)*

*(Clauses 137, 138, 139, 140, 141, 142, 143, 144,  
145, 146, 147, 148, 149, 150, 151, 152, 153,  
154, 155, 156, 157, 158, 159, 160, 161, 162,  
163, 164, 165, 166, 167, 168, 169, 170,  
171 and 172 agreed to)*

*Clause 173*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 173 of the Bill be amended in sub-clause (3) by deleting the words "section 150" and substituting therefor the words "section 168".

Here, we are seeking to delete the words "section 150" and substituting therefor the words "section 168". The cross-referencing was not correct. So, we are just removing the cross-referencing and making it correct.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Yes, the Member for Ndaragua.

**Hon. Nderitu:** Hon. Temporary Deputy Chairman, I would like to support the amendment. This is just an anomaly on the referencing. Therefore, the replacement will be quite in order.

I support.

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 173 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Before we go to the next clauses, I would like to introduce students from Kamarin Primary School from Elgeyo Marakwet County,



Keiyo Sub-County who are seated in the Speaker's Gallery. I have already introduced students from Kipkewa Primary School. So, I will not introduce them. I can see they are listed. Lastly, I wish to introduce pupils from Joy Elites Academy from Bureti Constituency, Kericho County. You are welcome to the National Assembly.

Proceed.

*(Clauses 174, 175, 176, 177, 178, 179, 180, 181,  
182, 183, 184, 185, 186, 187, 188, 189, 190,  
191, 192, 193, 194, 195, 196, 197, 198,  
199, 200, 201, 202, 203, 204,  
205 and 206 agreed to)*

*Clause 207*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 207 of the Bill be amended in sub-clause (5) by deleting the words "a company" appearing before the word "fails".

Here, we are seeking to delete the words "a company". In Clause 207(5), it says "if a company a company fails". So, we are deleting the words "a company", because they are repeated.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Rarieda, you want to speak to this one?

**Hon. Eng. Gumbo:** Yes, Hon. Temporary Deputy Chairman. As somebody who went through the Bill, the import is just to remove repetition and it is in order.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 207 as amended agreed to)*

*(Clauses 208, 209, 210, 211, 212, 213, 214,  
215, 216, 217, 218, 219, 220, 221, 222, 223,  
224, 225, 226, 227, 228, 229, 230, 231,  
232, 233, 234, 235, 236, 237, 238,  
239, 240 and 241 agreed to)*

*Clause 242*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 242 of the Bill be amended —

- (a) by renumbering the first sub-clause (3) as (2); and
- (b) by deleting the words “section 145” appearing in sub-clause (2)(b) and substituting therefor the words “section 144”.

We are proposing that Clause 242 be renumbered. We propose that sub-clause 3 be deleted and be replaced with sub-clause 2. Then in (b), it is about cross-referencing of section 145 to section 144, that being the correct reference that ought to have been referred to.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 242 as amended agreed to)*

*(Clauses 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328 and 329 agreed to)*

*Clause 330*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 330 of the Bill be amended by deleting Sub-clause (1) and substituting therefor the following sub-clause—

(1) Except as permitted under Section 331, a company shall not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of the person —

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company; or,
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company.

The import of this amendment is that we are proposing the insertion of this particular clause after deleting the other one so that it can cure the incompleteness of that clause as currently contained in the Bill. It was incomplete, hon. Temporary Deputy Chairman. So, we are making it complete.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give hon. Gumbo an opportunity.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I support except that, as I said previously, I would have been happier if he had said that we amend the clause in Sub-clause 1 by simply adding what he has put there which is for completeness. He should have said: “Subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company and procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company.”

Otherwise, I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the last chance to Member for Tharaka Nithi, Hon. Beatrice Nyaga. Do you want to speak to this specific one?

**Hon. (Ms.) B.N. Nyaga:** Yes, hon. Temporary Deputy Chairman. I want to support as indicated by Hon. Chepkong’a.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 330 as amended agreed to)*

*Clause 331*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 331 of the Bill be amended—

- (a) in Sub-clause (1) by numbering the paragraphs sequentially; and
- (b) by deleting Sub-clause (2).

The import of this amendment is to correct a numbering error in Sub-clause (1) by numbering the paragraph sequentially. So, we have just corrected that. The second one is by deleting Sub-clause (2). It does not say anything. It just merely says: “The conditions are that.” That is it. It does not speak to anything. So, it is redundant.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): To me, this looks so straightforward and so, I put the Question.

*(Question, that the words to be inserted  
be inserted, put and agreed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Clause 331 as amended agreed to)*

*Clauses 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342,  
343, 344, 345, 346, 347 and 348 agreed to)*

*Clause 349*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 349 of the Bill be amended in Sub-clause (5) by deleting the words "section 350" and substituting therefor the words "section 348".

Again, that was wrong cross-referencing. The correct number ought to have been 348. I thank you, hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see hon. Dalmas Otieno, Member for Rongo. Do you want to speak to this one Hon. Dalmas?

**Hon. Anyango:** *(Inaudible)*

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Cheboi): That is advice from a very senior Member of this House. Hon. Gumbo, do you want to speak to this one before I put the Question?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, it is straightforward. I really thank the Chair of the Committee. If you look through this Bill, there is a lot of wrong cross-referencing which the Committee has endeavoured to capture. This gives meaning to the Bill. I thank them as I support.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 349 as amended agreed to)*

*(Clauses 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360,  
361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375,  
376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390,  
391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402,  
403, 404 and 405 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I want to take this opportunity to recognise J.J. Kamotho Primary School from Kamacharia Division in Mathioya Constituency. The area is represented by the flight captain, Hon. Wambugu. They are welcome to the august House.

*Clause 406*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 406 of the Bill be amended in Sub-clause (3) by deleting the word "this" appearing immediately before the word "subsection".

The import of this is to remove the word "this" in Sub-clause (3) which reads as follows: "If a company fails to comply with Sub-section 1", instead of "if a company fails to comply with this Sub-section 1".

We are only removing the word "this".

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well.

*(Question of the amendment proposed)*

I will give the Member for Mathioya an opportunity to speak to this particular one.

**Hon. Wambugu:** Thank you, Hon. Temporary Deputy Chairman. I beg to support. For it to make any sensible meaning, the Chairman found it necessary to have this deletion.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well, let us have the Member for Nakuru Town East. Now we are not in 52. We already passed that one.

**Hon. Gikaria:** I even forgot that it was a new clause. I support but at the same time Hon. Dalmas has just proposed something. I know the rules are that we have to move as it is. But, maybe, we need to look at this and change these things so that we can save time.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. These are the rules as they are now. So, feel free to change any particular bit of the Standing Orders to accommodate your thoughts. I know some of you are exceptionally good at procedures of this House, including the Senior Hon. Dalmas and the Member for Nakuru Town East, Hon. Gikaria.

*(Question, that the word to be left out be left out, put and agreed to)*

*(Clause 406 as amended agreed to)*

*(Clauses 407, 408, 409, 410, and 411 agreed to)*

*[The Temporary Deputy Chairman  
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Chairlady  
(Hon. (Ms.) Shebesh) took the Chair]*

*Clause 412*

**Hon. Chepkong'a:** I thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 412 of the Bill be amended in Sub-clause (2) by inserting the number “411” immediately after the word “section” appearing in paragraph (a).

So, I am moving Clause 412 in an amended form. I have realized that there was an error in the numbering. Clause 412 be amended in Sub-clause (2), not Sub-clause (1) by inserting the number “411” immediately after the word “section” appearing in paragraph (a). I am, therefore, moving it in an amended format.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Give us a minute.

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is your point of order?

**Hon. (Eng.) Gumbo:** If you look at Clause 412(a), it is talking of the nominal amount of share as notified to the registrar in the statement of capital delivered under that section. It is also missing. We have to insert that section. I believe that is Clause 411. Your amendment is correct but it is hanging. It does not talk of the section. If you have a copy of the Bill, look at 412(1)(a). It says: “The nominal amount of the share as notified to the registrar in the statement of capital delivered under section---” So, what you are proposing is correct but the addition that you are quoting is also correct. The “411” should appear in both areas.

**Hon. Chepkong’a:** I thank Hon. Gumbo because he is hawk-eyed. We had too many amendments to realign in this particular Bill. So, I wish to move the Bill in an amended form:-

THAT, Clause 412 be amended in Sub-clauses (1) and (2) by inserting the number “411” immediately after the word “section” appearing in paragraph (a) and “Section 411” appearing in Clause 2 after the words “Section 413”.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 412 as amended agreed to)*

**Hon. Nassir:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is your point of order?

**Hon. Nassir:** My point of order concerns something that will be appreciated by every Member here. Hon. Dalmas had come up with a request that instead of the Clerk reading one by one, why can he not just say: “From this clause to this clause”? That is because it is a continuous clause. He can exclude the ones that are being amended. Does he have to read them word by word?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Look at your Standing Orders No. 132 and 133. You will see that, that is the procedure that needs to be followed. It must be done that way.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, precedents can take over as well. It is something that has been done before. This Bill has many clauses.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, we are just following the Standing Orders as they are currently.

**Hon. Nassir:** Thank you.

*(Clauses 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, and 476 agreed to)*

*Clause 477*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 477 of the Bill be amended—

(a) in Sub-clause (2) in paragraph (a) by deleting the words “an appropriate national newspaper” and substituting therefor the words “a newspaper of nationwide circulation in Kenya”; and,

(b) by deleting Sub-clause (3).

This will provide clarity on the mode of publicising the required notice. Secondly, it is consistent with the language that is used in other statutes. Thank you.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, I support. Once you insert the amendment that has been proposed by the Chair of the core Committee, Sub-clause 3 becomes superfluous. This country is going digital. We should encourage more of those adverts to appear in the website. I do not think there is any company of repute which does not maintain a website or blog. In keeping with the traditions, there is nothing wrong with it. However, let us also be keeping in trend with what is happening.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 477 as amended agreed to)*

*Clause 478*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 478 of the Bill be amended in Sub-clause (2)(a)—

(a) in sub-paragraph (i) by deleting the words “section 465(1)” and substituting therefor the words “section 477(1)”; and,

(b) in sub-paragraph (ii) by deleting the words “section 465(2)” and substituting therefor the words “section 477(2)”.

We are seeking to correct the close referencing and remove the errors that are contained in that clause.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 478 as amended agreed to)*

*(Clauses 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489,  
490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501,  
502, 503, 504, 505, 506, 507, 508, 509, 510, 511,  
512, 513, 514, 515, 516, 517,  
518 and 519 agreed to)*

*Clause 520*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 520 of the Bill be amended in sub-clause (1) by deleting the word “share” appearing immediately before the words, “that are to be redeemed”, and substituting therefor the word “shares”.

We are seeking to make it grammatical by removing the word “share” and replacing the word “shares”. Letter “s” was missing. It was not making grammatical sense. I thank you.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out,  
put and agreed to)*

*(Question, that the word to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 520 as amended agreed to)*

*(Clauses 521 and 522 agreed to)*

*Clause 523*

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 523 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (2)—



(2a) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal value of the shares redeemed or to be redeemed as if those shares had never been issued and, accordingly, the share capital of the company shall not for the purpose of any enactments relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this subsection.

(2b) Despite subsection (2a), where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

We are proposing that the new sub-clause be reinstated as it was contained in Section 60(4) of the existing or the current Companies Act Cap.486 on exemption of companies to pay stamp duty on the redemption of shares in exchange for new shares. The provision will ensure that the companies are not taxed twice. This is to remove double taxation on the part of companies.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, this new inclusion is good because what has been an impediment to the growth of enterprises in this country is this double taxation, some of which appear to be inadvertent. So, this inclusion, which is an import from the existing law, is very good as it forestalls the possibility of inadvertent double taxation which will be harmful to the growth of enterprises. I support.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairlady. I want to support this inclusion just as Hon. Gumbo has said. The issue of double taxation is a very challenging issue to investors. This inclusion is going to make sure that there is no double taxation. This is really going to be good for companies. So, I support.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 523 as amended agreed to)*

*(Clauses 524, 525, 526, 527, 528, 529, 530, 531,  
532, 533, 534 and 535 agreed to)*

*Clause 536*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 536 of the Bill be amended in sub-clause (5)(b)(i) by deleting the words "section 568" and substituting therefor the words "section 566".

What we are seeking to do is to replace Clause 536 (5)(i). Section 568 should be section 566. As you know, as a Committee, we had about 900 amendments. So, while they were cleaning the Bill, they forgot the cross-referencing. So, we are trying to clean that up.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 536 as amended agreed to)*

*(Clauses 537, 538, 539, 540, 541, 542, 543, 544, 545 and 546 agreed to)*

#### *Clause 547*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 547 of the Bill be amended in sub-clause (1) by deleting the words "under section 780" and substituting therefor the words "to require a person to provide information about their interests in the company's share".

We are seeking to remove this cross referencing, so that it is easy for the clause to flow and people can read without turning pages. We thought it was becoming untidy. The words that are being imported are few.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 547 as amended agreed to)*

*(Clauses 548 and 549 agreed to)*

#### *Clause 550*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 550 of the Bill be amended by renumbering clauses (9), (10) and (11) as (8), (9) and (10), respectively.

This is to correct the numbering error.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 550 as amended agreed to)*

*Clause 551*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 551 of the Bill be amended in sub-clause (4) by deleting the word “be” appearing immediately after the words “the register is”.

This is just to remove unnecessary words that were imported into the Bill. These are mistakes that were included during typing. They do not make sense.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, I want to support the amendment, as I thank the Committee. For those of us who have taken time to look at this Bill, there are quite a few repetitions, grammatical and numbering errors. So far, you can see a trend whereby the Committee has taken efforts to capture them.

I support the amendment.

*(Question, that the word to be left out be left out, put and agreed to)*

*(Clause 551 as amended agreed to)*

*(Clauses 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596 and 597 agreed to)*

*Clause 598*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 598 of the Bill be amended in the marginal note by deleting the words “section 609” and substituting therefor the words “section 597”.

Here, we are seeking to remove the wrong cross-referencing of clauses. From Clause 609, what is written as “section 609” should be replaced with the words “section 597”. This arises from the deletions that we proposed. In cross-referencing, we made errors.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, this is very encouraging. The correction that has been captured by the Committee is in the marginal note. I would also urge the Committee, which is something that I spoke to when I was contributing during the Second Reading, that there are errors even in the arrangement of clauses in this Bill. Before we clean up the Bill, there are some typographical errors even in the arrangement of clauses which is something that we normally do not amend. It is very encouraging that the Committee was thorough enough to even see the errors that are appearing in the marginal notes.

I support.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 598 as amended agreed to)*

*(Clauses 599, 600, 601, 602, 603, 604, 605 and 606 agreed to)*

Clause 607

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 607 of the Bill be amended in sub-clause (4) by deleting the words “section 618” and substituting therefor the words “section 606”.

This is another cross-referencing error.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 607 as amended agreed to)*

*(Clauses 608, 609, 610, 611, 612, 613 614, 615, 616 and 617 agreed to)*

*Clause 618*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 618 of the Bill be amended in sub-clause (3) by deleting the words "section 611(6)" and substituting therefor the words "section 613(6)".

Hon. Temporary Deputy Chairlady, we are seeking to remove those referencing errors.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 618 as amended agreed to)*

*(Clauses 619, 620, 621, 622 and 623 agreed to)*

*Clause 624*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 624 of the Bill be amended in sub-clause (3) —

(a) in paragraph (a) by deleting the words "seven hundred and twenty" and substituting therefor the word "fifty";

(b) in paragraph (b) by deleting the words "three hundred and sixty" and substituting therefor the word "twenty".

Hon. Temporary Deputy Chairlady, the threshold of small companies of a turnover of not more seven hundred and twenty million and the value of its net assets of not more than three and sixty million are excessive and restrictive to business. Therefore, its reduction will promote business particularly for small companies. As you may be aware, this was a consensus of a retreat we had in Mombasa between the Institute of Certified Public Secretaries and Institute of Certified Public Accountants that was represented by a number of persons. When this proposal came, it was felt that the Kshs720 million was rather too high and many companies will be locked out. Most members of the Institute of Certified Public Secretaries of Kenya (ICPSK) are company secretaries that offer services to companies with a share capital of less than Kshs5 million. We found that putting the threshold too high will be unacceptable. After negotiations held in Mombasa between the ICPSK and the Institute of Certified Public Accountants of Kenya (ICPAK), it was agreed that the threshold be reduced so that it is neither too high nor too low as to exempt all companies from procedural requirements of filling relevant financial documents. Even as we consider Hon. Nassir's proposal, it is important to consider the other requirements. It is not only on monetary terms; but there is another obligation placed on those companies that have certain thresholds. If you reduce the threshold to be too low, you will be exempting them from filling certain documents with the Registrar of Companies. Therefore, as we consider this

Bill, this is our very considered position between ICPSK, ICPAK and the Departmental Committee on Justice and Legal Affairs. This was a retreat sponsored by the two institutions. It was a meeting that was not held in vain. It was a well-attended meeting by all the three sides. It is unfortunate that I have just received the documents from the law firm that was representing ICPSK. It was also attended by lecturers from Management University of Africa (MUA). It was a well-attended and reasoned meeting. I am not saying that you are not reasoning. It was a consensus building exercise.

Hon. Temporary Deputy Chairlady, I would like to plead with my good friend, Hon. Nassir that we leave the Bill the way it is. In the event that we have serious problems after six months, we will review and make the necessary adjustments to reflect the developments occurring in Kenya. We should not reduce the share capital to be too low as to exempt certain companies from filling returns or make them too high to render the company secretaries, who have been offering services to those companies, redundant. This is a country that has a high rate of unemployment. If the threshold is too high, we will have too many people paid by the small companies. As a Committee, we are pleading for understanding. Let us accept this position for the time being. It will be reviewed after six months.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, only deal with parts (a) and (b).

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, I am planning to do that. The Chair of the Departmental Committee mentioned the institutions that were represented. All of them represent multi-national companies that are dealing with multi-million shillings. Of course, they will be comfortable with Kshs50 million. The issue here is the definition of “small company”. Initially, the Committee had started it off at Kshs720 million and now it has gone down to Kshs50 million. That is what defines a small company - the assets of the company from Kshs360 million to Kshs20 million. There are proposals I had given and I have already put them in my amendments. I would wish that my colleagues reject the amendment by the Chair of the Departmental Committee and accept the proposals I have put up. I have defined a small company in the following words: First, it should have a turnover of Kshs5 million. The reason being that the Kenya Revenue Authority (KRA) allows that if you do not meet the threshold of a turnover of Kshs5 million, you are not subject to charge people VAT. You are considered a small enterprise by KRA by virtue of your turnover being Kshs5 million. Secondly, that a Kshs50 million company annual turnover is considered a medium sized company in Kenya today. It is not a small-sized company. It goes well with a company that has assets of Kshs20 million being considered a medium-sized company. How will this assist both companies? First, it will assist in the sense that a company that has presented its audited report to KRA is less likely to be told by KRA, that it has not done its reports properly and in depth. It is much easier for a company that has an annual turnover of Kshs300 or 400 million. It will become easier for scrupulous individuals to divide themselves up and form six different portions. They will break themselves into portions so that they do not meet that threshold of an annual turnover of Kshs50 million. In that way, this country really stands to lose huge amounts of money as taxes. I would request my colleagues to reject the amendments by the Committee.

Probably just to note down, Hon. Temporary Deputy Chairlady, instead of what the Chairman of the Departmental Committee on Justice and Legal Affairs is proposing that we wait for six months, and then juggle the lives of ordinary Kenyans, I have actually given a sub-clause in this clause which allows for the Cabinet Secretary (CS) to do something. We all know very well that economies of countries can go up and down. Based on that, the CS can have leeway to determine what is to be called a small company. There is a clause which the Committee has not put in as well. We will now be coming up with amendments to the same clause after every six months.

This affects a number of other clauses. There is this other issue of talking about what constitutes a small company, and which touches on three other clauses which are similar and I have proposed some amendments to them.

I am requesting that we reject this one so that we can accept my proposals. Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chepkong'a, do you have a point of order?

**Hon. Chepkong'a:** Yes. I do. What Hon. Nassir is advancing or stating is not favouring small companies. In fact, it is to the contrary. It is the proposal by the Committee, ICPSK and ICPAK which is actually favouring the small companies. His is to the contrary. We are expanding the small companies. What he is trying to do is reduce or completely do away with small companies. We are saying his is inimical to business. His proposal is inimical to business. Let hon. Members not be misled that the small threshold of 2.5 is business friendly. It is not. It is inimical. We have taken serious advice on this, Hon. Nassir. If he can allow us to ventilate this matter with him together with the legal team here - we have taken sufficient legal advice from the Parliamentary legal team, ICPSK and ICPAK. The proposal from the Committee together with the stakeholders is the one which is the most favourable to small businesses as opposed to his.

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Makali.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairlady. When you listen to the Committee Chairman and what Hon. Nassir is saying, I am tempted to support the Committee's amendment. This is the reason: The Constitution provides for public participation. As we make laws, this House is being encouraged a lot to consult key stakeholders. I get really encouraged to hear that there was a serious discussion between the key stakeholders in matters of this nature and, more so, the public secretaries and accountants who interact with the companies that we are discussing here on day-to-day basis.

I would plead with Hon. Nassir to give a chance to this amendment. It is like a negotiated amendment. If it becomes tricky in terms of implementation, we still have a free hand to make any other amendments after six months. So, let us see how it works.

I want to support the Committee's amendments. Thank you very much.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Tong'i.

**Hon. Tong'i:** Thank you, Hon. Temporary Deputy Chairlady. I am persuaded with the argument from Hon. Nassir that if we are meant to support the small businesses, which is our core function here, we have to give them incentives to ensure that they are going to thrive against the so-called foreign companies.

If you look at the provision in that clause, we are actually killing the small businessman in many ways. If the Kenya Revenue Authority (KRA) has been able to recognise a small

company as any company which has a turnover of less than Kshs5 million, in their wisdom, then it is only fair that we expand the same idea so that we do not contravene what the law in KRA provides for. Therefore, we will be advancing and supporting the small businessman who is actually the reason we are here today. That way, we will be able to get more income in terms of taxes from the many people who are going to do businesses.

When you talk of the Kshs50 million threshold which my colleague was taking about, I also find it difficult to comprehend that we want to put our threshold at that level because then, we are going to hurt the same people that we are meant to make laws to protect. My proposal is we adopt what Hon. Nassir had recommended because it takes care of the small man as opposed to the developed industries in the market, which can wriggle around and get their way and do the right thing because of their strength. I think that will be in the best interest of this country.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, of course, my good friend Hon. Chepkong'a as a lawyer, is necessarily a wordsmith but I wish he could do a little bit of mathematical modelling around his argument. If he did, then he would realise that what he is doing is to increase the number of small companies and remove many more companies from the tax bracket. I see a lot of mischief and vested interests in the proposal by ICPSK and ICPAK in proposing that we take it to Kshs50 million or Kshs5 million.

What Hon. Nassir is proposing is actually putting fewer companies out of the tax bracket. What Hon. Chepkong'a is doing is expanding that. We are going to have a lacuna. We are headed into what will now be the position of KRA. As it is, they define small companies as those with a turnovers of Kshs5 million and asset bases of not more than Kshs2 million. If you increase that and exempt them from Value Added Tax (VAT), are you not affecting the revenue uptake by KRA?

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

Hon. Nassir, we are waiting for you to move your amendment on 3(c) and the new clause.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 624 of the Bill be amended—

(a) in sub-clause (3) by—

- (i) deleting the words “seven hundred and twenty million” appearing immediately after the words “not more than” in paragraph (a) and substituting therefor the words “five million”;
- (ii) deleting the words “three hundred and sixty million” appearing immediately after the words “not more than” in paragraph (b) and substituting therefor the words “two million five hundred thousand”;



- (iii) deleting the word “fifty” appearing immediately after the words “not more than” in paragraph (c) and substituting therefor the word “twenty”;
- (b) by inserting the following new sub-clause immediately after sub-clause (3)—
  - “(3A) The Cabinet Secretary responsible for the National Treasury may, by notice in the Gazette, revise—
    - (a) the turnover limit set out under section (3)(a) based on the prevailing economic environment; and,
    - (b) the value of a company’s net assets set out under section (3)(b) on the basis of the prevailing economic environment.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, could you withdraw your amendments to Sub-clause 3(i), (ii) and (iii)?

**Hon. Nassir:** I withdraw my amendments to sub-clauses 3(i), (ii) and (iii).

*(Proposed amendments to subclause (3) parts (i), (ii) and (iii)  
by hon. Nassir withdrawn)*

The new sub-clause (3A) will cater for everyone’s needs. I am hoping that the first person who will support me on this will be the Chairperson of the Committee.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Just a minute. I would like to recognize students from Chepalungu Boys’ High School in Chepalungu Constituency, Bomet County, seated in the Public Gallery. Let us welcome them.

*(Applause)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Dalmas Otieno.

**Hon. Anyango:** Hon. Temporary Deputy Chairlady, this amendment adds value. Leaving it to the Cabinet Secretary to make decision from time to time without having to come back to the House for amendments is a good idea. So, the revised amendment by Hon. Nassir adds value to this legislation. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Gikaria.

**Hon. Gikaria:** Hon. Temporary Deputy Chairlady, I do not understand whether what has been moved by Hon. Chepkong’a that any variation requires the approval of Parliament conflicts with this amendment in which we are now allowing the Cabinet Secretary to reduce the rates without the approval of Parliament. It is a little bit confusing. I would wish that anything being done by the Cabinet Secretary be subjected to the approval of the House. If the Cabinet Secretary decides to increase it to Kshs1 million without bringing it to Parliament, what happens? It is important not to allow the Cabinet Secretary to decide some of these things alone. We need them to be brought to Parliament. I would ask Hon. Nassir to withdraw this amendment. The Cabinet

Secretary might decide to increase the rate to as high as he wants and we may not be able to question him.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 624 as amended agreed to)*

Clause 625

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We will again start with Hon. Chepkong'a and then go to Hon. Nassir.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairlady. Hon. Nassir's amendment that has been approved is an omnibus clause that cuts across all of them so that whenever the Cabinet Secretary makes a decision, it applies to the other sections as well, including this one which we are seeking to amend. I beg to move:-

THAT, Clause 625 of the Bill be amended in sub-clause (4)—

- (a) in paragraph (a) by deleting the words “seven hundred and twenty million shillings net or eight hundred and sixty-five million shillings gross” and substituting therefor the words “fifty million shillings”; and,
- (b) in paragraph (b) by deleting the words “three hundred and sixty” and substituting therefor the word “twenty”.

The same reasons as those I gave with regard to Clause 624 apply. This was also a negotiated settlement between ICPSK and ICPAK together with the Departmental Committee on Justice and Legal Affairs. I want to plead with Members to accept this amendment since we have given power to the Cabinet Secretary to revise and review depending on the economic circumstances prevailing in the country.

I thank you, Hon. Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, as the Chairperson of the Committee has rightly put it, whatever we have passed in Clause 624 cuts across Clauses 625 to 711. So, for purposes of following the Standing Orders, I would like to withdraw my amendment to Clause 625.

*(Proposed amendment to Clause 625 by Hon. Nassir withdrawn)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you.

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 625 as amended agreed to)*

*(Clauses 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653 and 654 agreed to)*

*Clause 655*

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 655 of the Bill be amended—

(a) in sub-clause (4)(b)(i) by inserting the word “impact” immediately after the words “including the”; and,

(b) by renumbering sub-clause (8) and (7) as (7) and (8) respectively.

This is purely to insert the word that was missing and to correct what was incorrectly numbered. Thank you.

*(Question of the amendment proposed)*

*(Question, that the word to be inserted be inserted, put and agreed to)*

*(Clause 655 as amended agreed to)*

*(Clauses 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675 and 677 agreed to)*

*Clause 678*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 678 of the Bill be amended by deleting the words “section 686” and substituting therefor the words “section 676”.

This is purely to remove the errors in numbering.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 678 as amended agreed to)*

*(Clauses 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 686, 697, 698, 699, 700, 701, 702, 703 and 704 agreed to)*

*Clause 705*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I wish to drop that amendment. The amendment ought to have been on Clause 706 and not clause 705. So, I drop the amendment to Clause 705. But I have an amendment to Clause 706.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, your amendment to Clause 705 is withdrawn and you have an amendment on Clause 706.

**Hon. Chepkong'a:** Yes.

*(Proposed amendment to Clause 705 by  
Hon. Chepkong'a dropped)*

*(Clause 705 agreed to)*

*Clause 706*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 706 of the Bill be amended in sub-clause 1(c) by inserting a new paragraph as follows –

(c) “financial statements or exemption statement where applicable”.

It was missing.

Thank you.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady that is a good amendment. I want to support it. I had asked myself what it was doing in Clause 705. It was not making sense but I am glad where he has put it. It is very important that as a company makes its annual returns, it also includes financial statements and exemption statements where applicable. I support.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 706 as amended agreed to)*

*(Clauses 707, 708, 709 and 710 agreed to)*

*Clause 711*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two amendments there. We will start with Hon. Chepkong'a.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 711 of the Bill be amended—

(a) in sub-clause (2)—

(i) in paragraph (b) by deleting the words “seven hundred and twenty million” and substituting therefor the words “fifty million”;

(ii) in paragraph (c) by deleting the words “three hundred and sixty” and substituting therefor the words “twenty”;

(b) by renumbering the repeated sub-clause (4) as sub-clause (5).

This applies as it was in clauses 624 and 625. As mentioned earlier, the amendment to Clause 624 to give power to the Cabinet Secretary provides also an omnibus provision to ensure that the Cabinet Secretary has the discretion to review as and when the economic situations in the country prevails in the country at that time. We have a consensus with Hon. Nassir on this.

Thank you.

*(Question of the amendment proposed)*

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady. I just felt that it is prudent for me to formally withdraw my amendment so that we are all in agreement. So, I formally withdraw my proposed amendment to Clause 711. As the Chairman rightly put it, clauses 624, 625 and 711 are inter-linked.

*(Proposed amendment to Clause 711 by Hon. Nassir withdrawn)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 711 as amended agreed to)*

*(Clauses 712, 713 and 714 agreed to)*

*Clause 715*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 715 of the Bill be amended by deleting the words “section 551” and substituting therefor the words “section 714”.

This is the correct reference.

*(Question of the amendment proposed)*

*Question, that the words to be left out*

*be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 715 as amended agreed to)*

*(Clauses 716, 717, 718, 719, 720, 721, 722, 723, 724  
725, 726, 727, 728, 729, 730, 731, 732, 733,  
734 and 735 agreed to)*

*Clause 736*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, the Bill be amended by deleting Clause 736.

The terms “senior statutory auditor” does not exist in Kenya. We do not have a senior statutory auditor. We only have auditors. So, it is superfluous to provide for a senior statutory auditor which is not used anywhere in the Bill or in any other legislation. Someone just picked it from somewhere and just plugged it into this legislation. So, as far as we are concerned, it does not serve any purpose.

*(Question of the amendment proposed)*

**Hon. (Eng. Gumbo):** Hon. Temporary Deputy Chairlady, I agree with the Committee Chairman. If we are to put that term “senior statutory auditor”, it ought to be defined within the Bill. It also ought to be clear in terms of what the qualification of a senior statutory auditor in Kenya is. Neither the qualifications nor the definition are appearing anywhere in the Bill. Therefore, that provision in Clause 736 is superfluous and I support the move by the Chair to delete it.

I support.

*(Question, that the words to be left out be left  
out, put and agreed to)*

*(Clause 736 deleted)*

*(Clauses 737, 738, 739, 740, 741, 742 and 743 agreed to)*

*Clause 744*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move: -  
THAT, Clause 744 of the Bill be amended in sub-clause (6) by deleting the words “section 269(4)” and substituting therefor the words “section 267(4)”.  
This is purely on cross-referencing.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 744 as amended agreed to)*

*(Clauses 745, 746, 747, 748, 749, 750, 751,  
752, 753, 754, 755, 756, 757, 758, 759,  
760, 761, and 762 agreed to)*

### Clause 763

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 763 of the Bill be amended by deleting the words “section 764” and substituting therefor the words “section 762”.

This is also to correct a cross-referencing error.

*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 763 as amended agreed to)*

*(Clauses 764, 765, 766, 767, 768, 769, 770,  
771 and 772 agreed to)*

### Clause 773

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by deleting Clause 773 and substituting therefor the following clause—

Eligibility for  
appointment as a  
statutory auditor.

No. 15 of 2008

773. A natural person or firm is eligible for appointment as an auditor only if the person, or each partner of the firm—

(a) is the holder of a practicing certificate issued under section 21 of the Accountants Act;

(b) has a valid annual license issued under Section 22 of

the Accountants Act.

The import of the proposed amendment is to remove the term “statutory auditor”, which is non-existent in Kenya. Further, it adds value and ensures that only qualified and practising advocates are eligible to be appointed as auditors. The other one does not exist in Kenya. Possibly it exists in Australia.

*[The Temporary Deputy Chairlady  
(Hon. Ms.) Shebesh] left the Chair]*

*[The Temporary Deputy Chairman  
(Hon. Cheboi) took the Chair]*

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Members, I will give a chance to Hon. Kiptui. Do you want to speak to this one?

**Hon. (Ms.) Kiptui:** No.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this is an important addition. Of course, it removes the term “statutory auditor”, which does not exist in our country. But most importantly, in the marginal note you can clearly see that this is something that has been lifted from the Accountants Act of 2008. While I support, I would have been happier if these two were combined, so that we can form one clause. Otherwise, I support.

*(Question, that the words to be left out be  
left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 773 as amended agreed to)*

*(Clauses 774, 775, 776, 777 and 778 agreed to)*

*Clause 779*

**Hon. G.W. Omondi:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 779 of the Bill be amended in sub-clause (1) by inserting the words “on the recommendation of the Institute of Certified Public Accountants of Kenya and” immediately after the words “Cabinet Secretary”.

The qualifications and operations of auditors and accountants in this country are regulated by ICPAK, and it will not be in order to have the Cabinet Secretary deciding who to become an auditor or an accountant in this country without the recommendation of ICPAK.

*(Question of the amendment proposed)*



**The Temporary Deputy Chairman** (Hon. Cheboi): The Members I will give a chance now will have to be very fast. It has to be quick. We have very limited time. Hon. Gumbo, go straight to the point without a lot of words.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, we have to recognize the role of professional societies in Kenya, if this country is to move forward. The amendment by Hon. Omondi is basically to recognise the regulating body of the accounting profession in Kenya.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, do you have anything on that?

**Hon. Chepkong'a:** I just want to support this proposed amendment. Originally, it gave power to the Cabinet Secretary (CS) to authorise someone who is a foreigner to be a company secretary by passing through the statutory bodies that this Parliament has mandated to issue practising certificates.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 779 as amended agreed to)*

*(Clauses 780, 781, 782, 783, 784, 785, 786,  
787, 788 and 789 agreed to)*

*Clause 790*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 790 of the Bill be amended in sub-clause (3) by inserting the word "the" immediately after the words "direction requiring".

Hon. Temporary Deputy Chairman, this is purely grammatical.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the opportunity to Hon. Mulu. Do you want to speak to this one?

**Hon. Mulu:** Hon. Temporary Deputy Chairman, I wanted to speak to the earlier one, and not this one.

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 790 as amended agreed to)*

*(Clauses 791, 792, 793, 794, 795, 796, 797, 798, 799, 800,  
801, 802, 803, 804, 805, 806, 807, 808,*

809, 810, 811, 812, 813,  
814 and 815 agreed to)

*Clause 816*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 816 of the Bill be amended in sub-clause (5) by inserting the word "of" immediately after the word "end".

That is again to make it grammatical. I wish we could do an omnibus on these errors. Unfortunately, it cannot be done.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is just a correction.

*(Question of the amendment proposed)*

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 816 as amended agreed to)*

*Clause 817*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 817 of the Bill be amended in sub-clause (3) by deleting the word "it" appearing at the beginning of paragraph (b).

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Clause 817 as amended agreed to)*

*(Clauses 818, 819, 820, 821, 822 and 823 agreed to)*

*Clause 824*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 824 of the Bill be amended in sub-clause (1) by deleting the word "this" appearing immediately after the word "company" and substituting therefor the word "that".

*(Question of the amendment proposed)*

*(Question, that the word to be left out*

*be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 824 as amended agreed to)*

*(Clauses 825 and 826 agreed to)*

*Clause 827*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 827 of the Bill be amended in sub-clause (1) by deleting the word "right" appearing immediately after the words "other securities in" in paragraph (d) and substituting therefor the word "respect".

This is just a typographical error.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 827 as amended agreed to)*

*(Clause 828 agreed to)*

*Clause 829*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 829 of the Bill be amended in sub-clause (4) by deleting the words "section 841(6) or (8)" and substituting therefor the words "section 828(6) or (8)".

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 829 as amended agreed to)*

*(Clauses 830 and 831 agreed to)*

*Clause 832*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 832 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following sub-clause-

“(1) There is established the Office of the Registrar of Companies.”

We are seeking to substitute therefor the following subclause (1): “There is established the Office of the Registrar of Companies”. Previously, it was indicated “There is the Office of the Registrar,” without establishing it. I thank you.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this is one area for which we must thank the Committee. This is under Part 31 which is on Registrar of Companies, registration of company documents and the marginal title; there is a Registrar, Deputy Registrar and Assistant Registrar. However, the provision as per the published Bill did not establish the Office of the Registrar. So, this is a good amendment. I wish to support it.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted, put and agreed to)*

*(Clause 832 as amended agreed to)*

*(Clauses 833,834,835,836,837,838, 839,840,841,842,  
843,844,845,846,847,848,849,850 and 851 agreed to)*

*Clause 852*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 852 of the Bill be amended in the marginal note by deleting the word “elapse” and substituting therefor the word “lapse”.

This was, again, a typographical error.

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted*

*in place thereof be inserted, put and agreed to)*

*(Clause 852 as amended agreed to)*

*(Clauses 853, 854, 855, 856, 857, 858, 859, 860,  
861, 862, 863, 864, 865, 866, 867, 868, 869,  
870, 871, 872, 873, 874, 875, 876, 877, 878,  
879, 880, 881, 882, 883, 884, 885,  
886, 887, 888, 889, 890,  
891 and 892 agreed to)*

*Clause 893*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 893 of the Bill be amended in sub-clause (3) by deleting the word “the” appearing immediately after the words “to which”. This is just correction of grammar.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Clause 893 as amended agreed to)*

*(Clauses 894, 895, 896, 897 and 898 agreed to)*

*Clause 899*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 899 of the Bill be amended in sub-clause (2)(b) by deleting the word “are” appearing immediately after the words “that subsection” and substituting therefor the word “is”. This is just correction of grammar.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 899 as amended agreed to)*

*(Clauses 900, 901 and 902 agreed to)*

*Clause 903*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 903 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “sections 904 and 905” and substituting therefor the words “sections 901 and 902”; and,
- (b) in sub-clause (3) by deleting the words “sections 904 and 905” and substituting therefor the words “sections 901 and 902”.

This is to correct cross-referencing.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I wish to support the amendment. This demonstrates keenness on the part of the Committee. If you look at the marginal notes for Clause 904, they are referring to circumstances in which applications taken are to be withdrawn and in Clause 905 when withdrawal of an application takes effect. The effect of Clause 903 in the marginal notes is the copy of application in reference to the documentation.

I support the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are supporting, Hon. Gumbo. If you are supporting, let us proceed.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 903 as amended agreed to)*

*Clause 904*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 904 of the Bill be amended in sub-clause (1) by deleting the expressions “Part IX of” and “Part VIII of” wherever they occur.

*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Clause 904 as amended agreed to)*

*(Clauses 905, 906, 907, 908,909, 910, 911, 912, 913, 914, 915,*

916, 917, 918, 919, 920, 921, 922, 923, 924 and 925 agreed to)

Clause 926

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 926 of the Bill be amended by deleting the words "section 923" and substituting therefor the words "section 925".

Hon. Temporary Deputy Chairlady, it is just a cross-referencing correction.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 926 as amended agreed to)*

*(Clauses 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938 and 939 agreed to)*

Clause 940

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 940 of the Bill be amended in sub-clause (4) by deleting the words "section 642" and substituting therefor the words "section 652".

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 940 as amended agreed to)*

*(Clauses 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951 and 952 agreed to)*

Clause 953

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. I beg to move to move:-

THAT, clause 953 of the Bill be amended in sub-clause (2) by deleting the words “section 923” appearing in paragraph (a) and substituting therefor the words “section 925”.  
Again, that is a typographical error.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, this is a typographical error. Hon. Members I see your interest but I think we really do not need to contribute on typos. When it comes to substantive ones, I will definitely give opportunity to the Hon. Members I see on the screen.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted, put and agreed to)*

*(Clause 953 as amended agreed to)*

*(Clause 954 agreed to)*

*Clause 955*

**Hon. Chepkong’a:** Thank you, Hon. Temporary Deputy Chairman. I beg to move to move:-

THAT, clause 955 of the Bill be amended in sub-clause (4) by deleting the words “section 665” and substituting thereof the words “section 652”.  
I thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Is it another typo?

**Hon. Chepkong’a:** Yes.

*(Question, that the words to be  
left out be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 955 as amended agreed to)*

*(Clauses 956, 957, 958, 959, 960, 961,  
962, 963, 964 and 965 agreed to)*



*Clause 966*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move to move:-

THAT, clause 966 of the Bill be amended in sub-clause (4) (a) by deleting the words “or civil partner”.

The import of this is to delete that which does not exist in our statutes. The definition of a natural person meaning associate means that person's spouse and not civil partner. Civil partner brings in other things like lesbians that our Constitution outlaws. We do not have civil partners. This only exists in the Western world.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): All right. This is more substantive. I will give chances to two Members, especially those who have not spoken. I see Hon. Mwaita. No, let me start with Hon. Makenga because I had promised him something.

**Hon. Makenga:** I support this amendment as proposed by the Mover. I want to say that as he has said, a civil partner may not be very useful or important in our society.

Therefore, I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Cherangany, in one word please. You are not interested in this amendment. Let us have Hon. Mong'are.

**Hon. Geni:** Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity to break my silence on this very serious and important Bill. I support the amendment. It is only that the Mover has used a very harsh word. If he withdraws that, I am comfortable with the amendment. I support the amendment.

Thank you.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 966 as amended agreed to)*

*(Clauses 967, 968, 969, 970, 971, 972,  
973, 974 and 975 agreed to)*

*Clause 976*

**Hon. Korir:** Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 976 of the Bill be amended—

(a) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Registrar shall approve the application for registration and register the company by entering its name and other particulars in the Foreign Companies Register if the application—

(a) contains the information prescribed by the regulations for the purposes of this section;

- (b) demonstrates that at least thirty per cent of the company's shareholding is held by Kenyan citizens by birth;
- (c) is accompanied by the prescribed fee, if any, and the required documents; and,
- (d) complies with the requirements of this Part with respect to the company's name and the appointment of a local representative"
- (b) in sub-clause (3)(c) by inserting the words "and shareholders" immediately after the word "directors".

This relates to registration of foreign companies. This is to make sure that, as the US President said, Africa and Kenya are on the move, and that he was in Kenya because he wanted to be part of that move. As we move forward as a country and as a continent, we need to move with our people. If everybody comes and takes away from us what we have, then we will not move with our people. As we allow foreign companies to come and invest in this country, we must make sure that some shares are held by citizens.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give an opportunity to some Members who have not spoken. Let me start with Hon. Moi. Do you want to speak to this amendment?

**Hon. Moi:** Thank you, Hon. Temporary Deputy Chairman. Number one, as much as I would like to commend Hon. Korir for his patriotism, if we say foreign companies must give 30 per cent of their shareholding to Kenyans by birth, we will be discriminating against those who are Kenyans by registration. I could have a son who was born in the United States of America and 18 years later he moves to Kenya and becomes a citizen by registration.

Number two is the fact that imposing 30 per cent local shareholding on any foreign company is very extreme. People who want to put their money in a venture are going to be extremely wary of just picking on any shareholder. If I were to support the Member, the local shareholding would be less than 30 per cent or none at all.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Gumbo in one word. Hon. Gumbo, the problem is that sometimes you take too much time.

**Hon. (Eng.) Gumbo:** I support this amendment wholeheartedly. I am usually very concerned that we Kenyans have the habit of always voluntarily turning our backbones into rubber bands when it comes to empowering Kenyans. If you go to some neighbouring countries in East Africa, you cannot be allowed to register a company unless you give 50 per cent to locals. Why should we be apologetic about this?

Hon. Temporary Deputy Chairman, I support and encourage this. We must empower Kenyans and there is nothing to be ashamed about.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Oyoo, please, in one minute.

**Hon. Oyoo:** Hon. Temporary Deputy Chairman, I want to thank Hon. Korir, but this is belated given that it is in history records that when Kenya attained Independence, it was a prerequisite for any company to give shares to local Kenyans. The immense greed of Kenyans made us reduce it to 10 per cent which, during the late Dr. Kiano's tenure started going to individuals' pockets. It is a good idea but it is ill conceived.

**The Temporary Deputy Chairman** (Hon. Cheboi): If you are supporting Hon. Chepkong'a really, we do not---

**An hon. Member:** We are opposing.

**The Temporary Deputy Chairman** (Hon. Cheboi): Are you opposing? Then I will give you an opportunity, Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, it is me first. I am his senior. I want to oppose. We are making this law to make Kenya competitive.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us listen to Hon. Duale, please.

**Hon. A.B. Duale:** Listen to me; we are not in an ODM parliamentary meeting, neither are we in Jubilee.

The history of Mobitelea and Safaricom is very clear. Some brokers would sit somewhere and this meant we would increase brokers on the streets---

**An hon. Member:** Who is Mobitelea?

**Hon. A.B. Duale:** You know it.

If you allow me, Mobitelea is a subsidiary, a shareholder of Safaricom. We are making this law, the Insolvency Bill and many others. We have even established special economic zones to bring foreign direct investments. We will make Kenyans who are brokers in the village to say that if you cannot give them 30 per cent, you will not do business. That is not what happens in most--- President Obama says, "Take Kenya where South Korea has reached." That law does not exist in South Korea and Malaysia.

I oppose and I want to tell my Members that, let us make Kenyans work very hard. Let them form their companies like Hon. (Eng.) Gumbo, so that their companies compete with other companies. You must allow engineers to have companies but you will have people who have not gone to school---

**The Temporary Deputy Chairman** (Hon. Cheboi): Members, be keen so that you make your decision. It will really be up to you.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. Let me give you my experience. I was a regulator at the Communications Commission of Kenya (CCK). We provided a policy in which we said that for you to invest in the telecommunication sector you had to have a Kenyan partner with 30 per cent. When I licensed Kencell at that time, now Airtel, 40 per cent was supposed to be Kenyan. Do you know what they did? They entered into backroom agreements with Merali and Group, so that they could circumvent the law. They cheated the law. They kept amending the policy in the telecommunication sector to where it is now; there is zero per cent requirement for a Kenyan to invest in the telecommunication sector.

Let me tell you Members, foreign direct investment comes in huge amounts such as US\$500 million. Which Kenyan will produce US\$150 million? Let us be serious.

Secondly, we are a very poor country. We are seeking to attract foreign direct investment. You are now telling those companies which are seeking to invest in Kenya that this is not an attractive destination. This law is seeking to encourage and make Kenya a friendly investment country. If you are going to bring things such as these, you are going to chase direct foreign investment out of this country.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I wanted us to dispose of this particular one and then we give an opportunity to the Leader of the Majority Party to move a Procedural Motion. I can see there is a lot of interest. So, the option which I have is for us to extend time, come back and proceed with this. So, we will allow the Leader of the Majority Party to proceed.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, Hon. Oyoo has a very long history. He worked with Moi and many other people. You can write 50 books on Oyoo. He even knows about Mobitelea.

**An Hon. Member:** Come to the ODM!

**The Temporary Deputy Chairman** (Hon. Cheboi): No, no, Leader of the Majority Party.

### PROGRESS REPORTED

**Hon. A.B. Duale:** This KANU man has confused me. That is why I never joined KANU. It is a very confused party. I was on my way to the ODM, but President Obama has messed it. I was going to the ODM and Obama told me that the only thing that exists, which is good, is Jubilee. So, I have stuck there.

Hon. Temporary Deputy Chairman, the Committee of the whole House is considering the Companies Bill, and has instructed me to report progress and seek leave to sit again today

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Cheboi) in the Chair]*

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Chairperson reporting to the House.

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, the Committee of the whole House is considering the Companies Bill, National Assembly Bill No.22 of 2015 and has instructed me to report progress and seek leave to sit again today.

**Hon. Gikaria** seconded.

*(Question proposed)*

*(Question put and agreed to)*

### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME

**The Temporary Deputy Speaker** (Hon. Cheboi): Leader of the Majority Party, you have the Floor.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No. 30(3)(a), this House resolves to extend the sitting time of the House until the conclusion of business appearing under Order No. 14 and the business relating to the adjournment of the House to a specific date appearing as Item 3 on page 709 of today's Order Paper.

**The Temporary Deputy Speaker** (Hon. Cheboi): Who is your seconder?

**Hon. Chepkong'a** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, we will now go back to Committee of the whole House.

#### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Hon. Cheboi) left the Chair]*

#### IN THE COMMITTEE

*(The Temporary Deputy Chairman  
(Hon. Cheboi) took the Chair)*

#### THE COMPANIES BILL

*(Resumption of consideration  
interrupted in Committee today)*

#### Clause 976

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, you remember that we were still on Clause 976. There was quite some interest from the Members. You will have the Floor.

We will start with Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Temporary Deputy Chairman. I stand to support this amendment. The reason is that as Kenya is growing richer, the majority of Kenyans are getting poorer. The reason is basically that a lot of the wealth we have is actually owned by foreigners and a few people who pretend to be businessmen but are basically agents for principals who are abroad. In

South Africa, immediately after their independence, there was serious effort and companies had even to give shares to local people, so that ownership became local. So, 30 per cent is acceptable and we should support it for the sake of Kenyans.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the chance to one more Member. Let me give the chance to Hon. Mwaita.

**Hon. Mwaita:** Thank you, hon. Temporary Deputy Chairman for giving me this chance. I support this amendment. I support Hon. Korir because I remember when we were discussing the Public Procurement and Disposal Bill in this House, we pegged the local content at 40 per cent, so that citizens may benefit from business. This is timely. We should initiate it from the time of registration. This is a very good move.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Pukose. Hon. Members are supposed to be rewarded for being in the House.

**Hon. (Dr.) Pukose:** Thank you, hon. Temporary Deputy Chairman. I support this amendment of 30 per cent. This is because when you compare us with our neighbouring countries--- In Tanzania and Ethiopia it is 50 per cent. Ethiopia makes it very positive because companies are not allowed to employ a foreigner who has qualifications which local people have.

So, we should accept this 30 per cent.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, hon. Members, make your decision.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 976 as amended agreed to)*

*(Clauses 977, 978 and 979 agreed to)*

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. Although I was "bwoged" by Mr. Ochieng, I can tell you that is the true situation. I may be representing the minority view, but outside there, it is the majority view.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, you have been heard, but the rest have carried the day.

**Hon. Chepkong'a:** I have just been defeated by the minority here.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us not flog a dead horse.

*Clause 980*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 980 of the Bill be amended in sub-clause (4) by inserting the word "offence" immediately after the word "further";

*(Question of the amendment proposed)*

*(Question, that the word to be inserted  
be inserted, put and agreed to)*

*(Clause 980 as amended agreed to)*

*(Clauses 981, 982, 983, 984, 985, 986, and 987 agreed to)*

*Clause 988*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 988 of the Bill be amended in sub-clause (9) by deleting the word "my" appearing immediately after the words "date as" and substituting therefor the word "may".

Hon. Temporary Deputy Chairman, it was supposed to be "may", but somebody put "my".

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 988 as amended agreed to)*

*(Clauses 989, 990, 991, 992, 993, 994, 995,  
996, 997, 998, 999, 1000, 1001 agreed to)*

*Clause 1002*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 1002 of the Bill be amended by capitalizing the word "court" wherever it occurs.

If we do not put capitals, nobody will know that we are talking about a High Court or a Court of Appeal or a Magistrate's Court.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see requests here, I do not know if they want to speak to this particular one. I could give two quick ones. Hon. Oyoo and Hon. Gikaria in that order.

**Hon. Oyoo:** Sorry, Hon. Temporary Deputy Speaker. I had intended to speak to another one. I cannot support blindly because I may be blamed by posterity. I am being very careful.

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Cheboi): In your stead I will pick on Hon. Makenga.

**Hon. Makenga:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment as proposed by the Chair, Hon. Chepkong'a.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Member for Nakuru Town East.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I support. This is why a search warrant is issued. I totally support. It should be clear.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Pukose, do you want to speak to this one?

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairman, I want to support that amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Thank you very much.

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 1002 as amended agreed to)*

*(Clause 1003 agreed to)*

*Clause 1004*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1004 of the Bill be amended in sub-clause (11) by deleting the words "Insolvency Act, 2015" and substituting therefor the words "laws relating to insolvency".

The Insolvency Act could be amended from time to time. It could reflect other dates. To make it consistent with what we have done, we substitute it.

I thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see that there is Member for Rangwe. I know that you want to speak to this one.



**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment. As we speak, we do not have the Insolvency Act, 2015. So, passing a law that creates an impression that the law exists would be a mistake. This is a neater way of presenting it. I support. Thank you.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 1004 as amended agreed to)*

*(Clauses 1005, 1006, 1007, 1008 and 1009 agreed to)*

*Clause 1010*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, there is nothing that is called 1010.

**The Temporary Deputy Chairman** (Hon. Cheboi): There is a problem with *kumi kumi*.

*(Laughter)*

**Hon. Chepkong'a:** It could be that. You know that we are in the process of eliminating *kumi kumi*.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1010 of the Bill be amended in sub-clause (1) by deleting the words "otherwise than in bound books".

Requiring companies to put them in bound books looks like you are dictating what it is going to be like in a school or something like that. We should not have it in bound books. It could be in files.

I thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 1010 as amended agreed to)*

*(Clauses 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019 and 1020 agreed to)*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, since this is the last amendment that I am moving, I must thank the Members for being extremely patient. I also want to thank the

Leader of the Majority Party for agreeing with the Committee to withdraw the Companies Bill 2014, to which the Committee made 900 amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): I understand your position, Hon. Chepkong'a, but will you not do it better when we go back to the House?

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. The Leader of the Majority Party does not want to be appreciated.

*Clause 1021*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1021 of the Bill be amended in sub-clause (2)(a) by deleting the words "or civil partner".

We do not have civil partners in this country. They only exist in other countries.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to two Members because it is the last one, but we can save the niceties for a later time. Can we start with Hon. Korir? I am trying to see the Members who have not spoken this afternoon.

**Hon. Korir:** Hon. Temporary Deputy Chairman, I stand to support the amendment. However, as we pass this Bill, we should look forward to what might happen to future generations. People might marry from outside and have civil partners. As much as I support the amendment, we should look to the future.

**Hon. Members:** Declare your interest!

**The Temporary Deputy Chairman** (Hon. Cheboi): No, no. I do not want anybody to ask Hon. Korir to declare his interest. Do not ask. It is not necessary. Let us have the Member for Kiharu.

**Hon. Kang'ata:** This is a very important amendment because it is checking against gay relationships. As the Chairman of the anti-gay caucus, I am very happy with this amendment. It is the most important amendment for my caucus. Members of the anti-gay caucus, support this Bill.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Leader of the Majority Party, what is your point of order?

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman. The Member for Kiharu is saying that he is the Chairman of the anti-gay caucus. There is nothing like that in the law. It has never been registered. To make it clearer, we shared it with President Obama and the issue was settled. It is not business anymore. It should be disbanded. President Obama heard that we have our own values and he went back with his values. The Member for Kiharu should stop it. That business is over.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Leader of the Majority Party! On a light note, you took away the seat of the Leader of the Majority Party and the Chairman of the Committee on Legal and Justice Affairs took one here. Hon. Kang'ata, in his shrewdness, decided to create one for himself, albeit not recognised in the House. Everyone can call themselves anything they want.

Lastly, let us have Hon. Nuh Junet on this one. I can see you have removed your card.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 1021 as amended agreed to)*

*(Hon. Kang'ata consulted loudly)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Kang'ata! I think you are out of order now. I do not know why you have to be excited by this particular one.

*(Clauses 1022, 1023, 1024, 1025, 1026 and 1027 agreed to)*

*New Clause 252A*

**Hon. Chepkong'a:** I beg to move:-

THAT, the Bill be amended by inserting the following New Clause immediately after clause 252-

Offence to include misleading, false or deceptive particulars in register of secretaries.

252A. A person who knowingly or recklessly authorises or permits the inclusion of misleading, false or deceptive particulars in a register of secretaries commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one million shillings, or to both.

Hon. Temporary Deputy Chairman, the New Clause 252A provides for the offence of giving misleading, false and deceptive information in a statement. It provides for stiff penalties for breach to protect the interests of companies. Many a times, we have known that many people give false statements with regard to financial statements of the company. For instance, the former Managing Director, Kenya Airways, left without giving the correct financial statement. You can see what has happened to KQ. This sort of behaviour will be completely outlawed once we pass this law.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Hon. Nuh:** Thank you, Hon. Temporary Deputy Chairman. I stand to support. As the Chairman of the Departmental Committee on Justice and Legal Affairs has said, there are many companies that are giving false statements when in the actual sense their financial positions are not as they are stating. Kenya Airways and Mumias Sugar Company have been giving clean

balance sheets, yet they do not have any money. Kenya Meat Commission and Uchumi Supermarkets have the same problem. *Sijui gani---*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nuh, which is this other one called *sijui gani*? It must be a new one here.

**Hon. Nuh:** Hon. Temporary Deputy Chairman, RIVATEX is also another problem.

**Hon. Kang'ata:** On a point of order, Hon. Temporary Deputy Chairman.

**Hon. Nuh:** We are not discussing gays here. We should bring alcoblow to this Parliament. Some people must be tested for alcoholism.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I totally agree with the Chair of the Departmental Committee. This is what happens in developed countries; companies will always produce to their shareholders the correct forensic audit and status of their companies.

Last night, I saw the Cabinet Secretary (CS) for the National Treasury saying that we are being given false investment options on Kenya Airways, and the Board was sitting there. On the partnership between KLM and Kenya Airways, no one did a due diligence business audit on it. Today, we might be very few in the Chamber, but this voluminous Companies Bill is going to save Kenyan companies and the economy.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Chairman.

*(Hon. (Eng.) Gumbo consulted loudly)*

Hon. (Eng.) Gumbo, it is my time to contribute. It is important that people who give false information are dealt with. There are people who are experts in giving false information and make companies look greater than they really are, only for the companies to fall soon after their exit; they then turn round and say "When I was there the company was doing very well." It is not the shareholders only that we are protecting. People must know that many people, Kenyans, employees, their children and the people served lose out. So, the common interests of Kenyans suffer a lot.

I support this.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Member for Kaiti, Hon. Makenga.

**Hon. Makenga:** Thank you, Hon. Temporary Deputy Chairman. I would like to support this amendment and say that what is happening in the Kenya Airways is total fleecing of this country's resources. The succession plan which was there for the former Chief Executive Officer (CEO) to exit and give room for the new CEO--- I think he was making good capital flight, because all this was happening under his watch. This is very serious and a forensic audit must be done in that company and bring the culprits to book; they should include Government officers who sit on that board.

I thank you and I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Hon. Members, I know there is a lot of interest in this, but there is another slot just after this. You will get an opportunity to speak to the same thing in the next few minutes. Just hold on, hon. Members.

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to probably three Members to speak to this one. It is about the same thing. We will start with Hon. Gumbo then I will come to this other direction where I will have two Members.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this is very good. Honestly, as I speak to this law and this amendment in particular, I think the Chairman of the Departmental Committee on Justice and Legal Affairs and his team need to be commended. They have saved this House a lot of time. Some of us had many amendments but since we found that they had been captured, we decided to drop them.

Hon. Temporary Deputy Chairman, I support.

**Hon. (Dr.) Pukose:** Thank you, Hon. Temporary Deputy Chairman. I am looking at this as a very critical issue. When you look at the fines and you are talking of “not exceeding Kshs1 million” I think that is too lenient and is not deterrent enough. Look at what has happened to the Kenya Airways. We lost about Kshs26 billion and you are fining somebody Kshs1 million. Surely, does it make any sense? I support the amendment but it should be stiffer to deter people from committing such a serious offence.

**Hon. Kang’ata:** Thank you, Hon. Temporary Deputy Chairman. I seek your guidance if what we intend to achieve is captured by this clause; here we are talking about a register of secretaries. I thought it should have been in the company’s registry or something. I seek your interpretation as to whether that which we seek to achieve will be captured in a register.

**The Temporary Deputy Chairman** (Hon. Cheboi): What did you say, hon. Leader of that particular---

*(Laughter)*

**Hon. Kang’ata:** Sorry, Hon. Temporary Deputy Chairman. I seek your guidance as to whether the expression “register of secretaries” is that which is going to help us achieve what we want. I would have proposed that it should be the company’s registry.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Maybe you can discuss that with the Chairman of the Departmental Committee on Justice and Legal Affairs, as I give opportunity to Hon. Mongare, Member for North Mugirango.

**Hon. Geni:** Thank you for giving me this opportunity, Hon. Temporary Deputy Chairman. As I support this amendment, I wish we could give the Mover some time and keep this amendment pending. This is so that this expression reading “not exceeding two years” can be amended further; it is so lenient. This could mean even two or three days. It should be amended further.

*(Question, that the new clause be added to the Bill, put and agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Third Schedule agreed to)*

*(Fourth Schedule agreed to)*

*(Fifth Schedule agreed to)*

*(Sixth Schedule agreed to)*

*Clause 3*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 3-

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

“auditor” means—

(a) a person or firm appointed as an auditor of a company under Part XXVII; or

(b) a person or firm appointed as an auditor of a body of a kind prescribed by the regulations for the purposes of this definition;

(b) in the definition of the phrase “prescribed financial accounting standards” by deleting the words “such body or bodies as may be prescribed by the regulations for the purpose of this Act” and substituting therefor the words “a professional body or bodies in accounting and finance recognized by law in Kenya.”;

(c) by deleting the definition of the phrase “statutory auditor” ;

(d) by deleting the definition of the phrase “working day” and substituting therefor the following new definition—

“working day” means any day between Monday and Friday, but does not include a public holiday;

This is to give interpretation to what has been referred to in the body of the Bill.

I thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**Hon. Kang'ata:** In this one, I would have proposed that the definition of ‘working day’ should have provided that “working day means any day between Monday and Friday, inclusive of those two days”. The way it is, it may be construed to mean ‘Tuesday, Wednesday and Thursday.’

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, while I agree, if we are to be a working nation, we should work on Saturday as well. I know our Adventist brothers have a problem with working on Saturday. I agree with Hon. Kang'ata that a working day should be between Monday and Friday, including the two days. Personally, I would have said between Monday and Saturday with a caveat for our Adventist brothers. The definition as it is means ‘Tuesday, Wednesday and Thursday’. Something should be done about it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me leave it to the Members. Let me hear the Member for Rangwe as the last person and then you will make your decision.

**Hon. Ogalo:** Thank you very much, Hon. Temporary Deputy Chairman. I support this amendment very much because there has been this confusion of whether Saturday is a working day or not. This makes it very clear that we, the Adventists, are not required to go to work on Saturday, even though somebody might interpret it differently; the spirit of this is very clear that you start work on Monday and you end on Friday. I know lawyers will argue on the wording.

Hon. Temporary Deputy Chairman, I support.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question that the words to be inserted  
in place thereof be inserted, put and agreed to)*

*(Clause 3 as amended agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Mover, to move reporting.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Companies Bill, National Assembly Bill No.22 of 2015 and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Cheboi) in the Chair]*

## REPORT AND THIRD READING

### THE COMPANIES BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): Can we have the Chairperson reporting?

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to report that the Committee

of the whole House has considered the Companies Bill, The National Assembly Bill No.22 of 2015 and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Mover of the Bill moving agreement with the report.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said report.

I request Hon. Gikaria to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Gikaria:** I second.

*(Question proposed)*

**Hon. (Dr.) Pukose:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Pukose, you have a point of order?

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Speaker, I am rising on Standing Order No.136. I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to re-committal of Clause 95 of the Bill”.

The reason for this is that when the amendment to Clause 95(5) was brought and opposed, the Chair at that time put a Question for the whole Clause 95 and, therefore, that made the whole Clause 95 to be null and void, yet we were supposed to oppose the amendment to sub-clause (5) of Clause 95. I ask Hon. Gikaria to second.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, Hon. Gikaria.

**Hon. Gikaria:** Hon. Temporary Deputy Speaker, I second regarding the re-committal of Clause 95(5). The volume of the Bill might have confused us, and we did not know exactly what we were voting for.

As he has said, we voted to remove the whole Clause 95, which was not the position. The vote was only for the amendment that was moved by the Chairman.

I beg to second.

**The Temporary Deputy Speaker** (Hon. Cheboi): I hope in future we will all be concentrating, so that we are able to deal with matters as they come. I am sure if Hon. Pukose was present with his good bass, matters would have been a little different.

Just a minute for some consultation.

Hon. Members, as you are aware, in accordance with this procedure, we will quickly go back to the Committee to deal with that specific bit.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Hon. Cheboi) left the Chair]*

## IN THE COMMITTEE



*[The Temporary Deputy Chairman  
(Hon. Cheboi) took the Chair]*

THE COMPANIES BILL

*(Resumption of consideration  
interrupted in Committee today)*

*Clause 95*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 95 by inserting the words “or imprisonment for a term not exceeding two years, or to both” in sub-clause (5).

The reason for the insertion of this penalty is because of failure to keep a register of members of a company which should be open for inspection and ought to be lodged with the Registrar.

I hear some murmurs here that there are some threats to be visited upon me. These threats should be nullified by the passage of this amendment. We were seeking to do a good job, but in the light of the anticipated opposition, I withdraw this amendment.

*(Proposed amendment to Clause 95 by  
Hon. Chepkong'a withdrawn)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Now that the Chairman has withdrawn the amendment, I will proceed to put the Question that Clause 95 be part of the Bill.

**Hon. Oyoo:** Hon. Temporary Deputy Speaker, I intend to take up the amendment if the Chairman has withdrawn it. Maybe he has been paid or promised something.

**The Temporary Deputy Chairman** (Hon. Cheboi): You know that will be out of order.

**Hon. Oyoo:** This is a very useful amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): That would obviously be out of order.

**Hon. Oyoo:** Hon. Temporary Deputy Chairman, this is a very useful amendment that will raid fly by night traders like the Leader of the Majority Party.

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, you know the rituals. You cannot do that Hon. Oyoo. Never mind the fact that you represent the very great people of Muhoroni. You will not do that.

*(Clause 95 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us not proceed in the ordinary manner. Can we have the Mover move reporting?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Companies Bill (National Assembly Bill No. 22 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Deputy Speaker  
(Hon. Cheboi) in the Chair)*

### REPORT AND THIRD READING

**The Temporary Deputy Speaker** (Hon. Cheboi): Can we have the Chairperson?

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Companies Bill (National Assembly Bill No. 22 of 2015) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Mover of the Bill.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Gikaria to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Gikaria:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Can we have the Mover to move the Third Reading?

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Companies Bill (National Assembly Bill No. 22 of 2015) be now read the Third Time.

I again ask Hon. Gikaria to second.

**Hon. Gikaria:** I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): I will give the Floor to four Members. As is the norm, I will start with the Leader of the Majority Party.

**Hon. A.B. Duale:** The Committee Chairman is telling me that I should be the last. He should read the Standing Orders. Preference is given to the leaders. Now that he has done a good job, maybe in the next Parliament he will be the Leader of the Majority Party.

From the outset, I thank most sincerely the Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Chepkong'a. I am sure the people of Ainabkoi did not make a mistake by electing a serious Member of Parliament and a Committee Chair. I am sure hon. Gumbo, who served with me in the last term, will agree with me that in our parliamentary life, we have

never seen such a Bill. This is one of the most important Bills the 11<sup>th</sup> Parliament is dealing with. It is also one of the Bills that the President used to ask me about until last night, because of the value it has for those doing business in our country.

Secondly, I also thank Hon. Gumbo and many Members who have sat here since 2.30 p.m. When I saw Hon. Junet coming in, he was wondering what was going on here because the last time he was here he brought a recommittal and told Members that he was sure the Bill would be returned. Hon. Junet, the President and the Chairman agreed with you. The Ethics and Anti-Corruption Commission (Amendment) Bill came back. Parliament and the President have no powers to sack people. It is the Ethics and Anti-Corruption Commission (EACC) which has the powers.

I want to thank the Committee because they even forced me to republish this Bill twice; it was because of poor drafting.

*(Hon. Oyoo consulted loudly)*

Hon. Temporary Deputy Speaker, protect me from these KANU diehards. Some of us were born when KANU was ruling. Hon. Oyoo is threatening me. You know he has threatened so many people in---

**The Temporary Deputy Speaker** (Hon. Cheboi): I did not realize that Hon. Oyoo is a Member of KANU.

**Hon. A.B. Duale:** He is a life Member of KANU, only that for him to reach this House, he had to use another vehicle. Selling KANU in that area is like selling pork to Muslims. So, the route to Parliament through KANU was like giving pork to me and Hon. Junet. I am sure in his heart he is in the *baba na mama* party.

I want to thank the Departmental Committee on Justice and Legal Affairs and all the Members of the House. I am sure with that extension of time we will be doing our duty as the National Assembly. We are doing very well and for that I want to thank everybody. I am sure we have given the country a very good company law. The 30 per cent amendment of the great runner was very good for those of us who do business. He did not make a disclosure, he is married to a foreigner and he wanted to sneak in some foreign amendments. I heard the hon. Chairman of Public Accounts Committee (PAC) say that there are too many beautiful Kenyan women. Now that he has left we will tell him that his amendment was mischievous. Hon. Pukose is his neighbour; I am sure over the weekend he will pass a message, not to him but to the white lady and tell her that he tried but could not succeed.

Thank you very much. I beg to support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. If Members can speak briefly, I will give more Members chances. Let us start with Hon. Junet.

**Hon. Nuh:** Thank you so much Hon. Temporary Deputy Speaker. Definitely, this is one of the Bills that the 11<sup>th</sup> Parliament will be proud of. This Bill, when it becomes an Act of Parliament, will make doing business in this country very easy. This is the right direction towards reforming the business environment of this country. Smaller economies within the region like Rwanda are attracting a lot of investments because of ease of doing business in their countries. One of the laws that will make this country very attractive and conducive in doing business is this Companies Bill that this House has passed today. I hope that when this Bill is

taken to the President for assent, he will do so without any question or referring a memorandum, as it happens nowadays when some of the Bills are sent to him for assent.

On this one, there is nothing that he can disagree with. This is a very important Bill. It has been said by the Leader of the Majority Party that the President has been asking about it. This Bill is long overdue; it should have come a long time ago. It is one of the Bills that will make this Parliament proud in the eyes of Kenyans.

With those few remarks, I want to thank the alternate Minister for Justice and Constitutional Affairs, the MP for Ainabkoi. He is a very serious lawyer. He cannot defeat you, but he is next to you. I know you defended me in a matter one time when I found myself on the wrong side of the law inside this Parliament.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Speaker for giving me the chance to congratulate my colleagues, Members of Parliament, for passing this important Bill. This law is very important to this country, more so with regard to our business environment. I am a happy Kenyan, knowing that those people who want to invest in this country have a legal framework, which is going to facilitate business and make investment in this country easier. That will result in Kenyans making more money and even creating employment for our youth. I appreciate that. I am happy to be associated with the 11<sup>th</sup> Parliament, which has passed this Bill.

At the same time, I would want to appeal and plead with the Hon. Members, that when we are discussing serious matters like this one, we need to be available. As you can see, we are a skeleton in terms of numbers.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will give the last shot to the very able Chair of the Committee. Hon. Members, you will have an opportunity to speak to the Adjournment Motion. I am sure that all we want to do is thank ourselves for the good work. We have had quite a long day. Let us have a short one from the Chair.

**Hon. Chepkong'a:** First and foremost, I must thank you very much, Hon. Temporary Deputy Speaker, for being very patient with us. You have sat through from 2.30 p.m. all the way to now. I also want to thank Hon. Shebesh who relieved you at some point.

I would also like to sincerely thank the Leader of the Majority Party. He has stood with us as a Committee. I remember when we were discussing the Executive, not the President or the Deputy President, but others who were interested in this Bill, we were told: "Pass it the way it is." I told the Leader of the Majority Party that we had serious problems. We pointed out that in Clause 123 the director's family included a partner. So, we told them: "You are introducing gay marriages here through the back door, which is contrary to Article 45 of the Constitution, which defines what a family is." It is a marriage between persons of opposite sex. Unfortunately, this law was drafted by some foreigners who generally have no problems with these issues. So, I must thank the Leader of the Majority Party for standing with us and withdrawing the Bill twice, so that we could propose amendments to 900 clauses. We have reduced the clauses from 1,176 to 1,027 as a result of our 900 amendments.

I want to also thank all Members who have sat through. They have not been sitting here for nothing. They have made history today as Members who have ensured that we have a new Companies Bill, which is far much better than what we had, the 1948 colonial relic that had never been amended. So, we were being governed by a law which the United Kingdom (UK) had abandoned. They have a new legal regime. However, we were still very proud that we had companies law.

For the first time since Independence, we now have a law that is home-grown. It has been made by the 11<sup>th</sup> Parliament. I can tell you that these Members of the 11<sup>th</sup> Parliament are very courageous men and women, except that there are no women in this House today. They have been fighting for seats. I do not know how they will explain this because they are missing in action. We do not have gender participation here. This speaks volumes that they do not participate actively in parliamentary activities.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Members! I will speak for them. This is probably not their very strong area. They will be there for very serious business.

Hon. Chepkong'a, wind up.

*(Laughter)*

**Hon. Chepkong'a**: Lastly, we know that we normally forget the Clerks. We must thank them for sitting with us throughout. We appreciate the work they have been doing. We also thank the Serjeant-at-Arms who happens to be the only lady in the House. We also thank Hon. Pukose who has been shouting the loudest of all.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, we will not put the Question because of obvious reasons. We do not have the requisite quorum.

We will proceed to the next Order. We have the Adjournment Motion by the Leader of the Majority Party. You have the Floor, Leader of the Majority Party.

### MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER  
THAN THE NEXT NORMAL SITTING DAY

**Hon. A.B. Duale**: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, pursuant to the provisions of Standing Order No. 31, this House adjourns until Tuesday, 18 2015 to enable Members of parliament to participate in the 46<sup>th</sup> Commonwealth Parliamentary Association (CPA), (Africa Region), Conference hosted by the Parliament of Kenya from 9<sup>th</sup> to 15<sup>th</sup> August 2015.

The Parliament of Kenya will be hosting the 46<sup>th</sup> Commonwealth Parliamentary Association (CPA) Regional Conference from 9<sup>th</sup> to 15<sup>th</sup> August 2015. The CPA aims to promote knowledge in constitutionality, legislative, economic, social and cultural aspects of parliamentary democracy. His Excellency the President of the Republic of Kenya will officially open the Conference, which over 400 delegates from Africa and beyond are expected to attend.

It has been the norm for the host country or Parliament, not to have parliamentary sittings during the period in order to encourage its Members to participate. It is for this reason that the House Business Committee, in its sitting on Tuesday, proposed this short recess. I want to make it clear that Committee sittings will, however, continue as scheduled during this duration. It is my hope that every one of us will take advantage of the short recess to participate in the

Conference, and all of us will strive to interact, network and share experiences with colleagues from Parliaments in other jurisdictions.

Since we have been sitting here since 2.30 p.m., I do not have much to say. I will ask the Members to support this and come in large numbers on Tuesday and Wednesday next week to show that Kenya is a serious member of the Commonwealth Parliamentary Group, Africa Region. Let us not have empty seats which are meant for the Kenyan Parliamentarians. It is a very good encounter. You will learn a lot. Very good papers will be presented. We have a very good Organising Committee of the Kenyan Chapter, under the able leadership of one of our executive Members, Hon. Makali Mulu and the staff of Parliament through our respective Clerks and our Speakers, who are Co-Presidents of the Kenyan Chapter. Enough preparations have been done. Let us appear and make sure that the Kenyan delegation has many Members of Parliament sitting behind it.

I beg to move.

I ask the Chairman of the Public Accounts Committee, the Member for Rarieda, to second.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker. I also thank my good friend, Hon. Duale, for the opportunity to second.

As I second the Motion, let me join my colleagues to congratulate the Members of this House for passing this historic Bill. Ten Parliaments in Kenya have been unable to pass the Companies Bill. The fact that the 11<sup>th</sup> Parliament has been able to pass it is something that will go down in history. It is said that good leaders plan for generations while bad leaders plan for the next election. Members who have stood in this House today have through this law planned for the next generation of Kenyans and I want to commend them.

This Bill is very big. I took time to look at it. I will be going to the Adjournment Motion shortly. But before we get to the final stage of this Bill, there are a few things that we should go through. For example, I am asking myself what should come first between the name of the company, the company formation or the company constitution. After you do all that, then you find that the registration of the company is coming in at Part XXXI. I believe that after you form the company, the next thing is to register it.

Hon. Temporary Deputy Speaker, I have always said on the Floor of this House that this country is constructed for greatness. If we can sort out the small problems that have been tearing this country apart, we will be like no other in this region. What is not known is, even as the 46<sup>th</sup> Commonwealth Parliamentary Association (CPA) (Africa Region) will be meeting, the Executive Committee of the East African Association of Public Accounts will be meeting in Nairobi on Monday and Tuesday. This country is blessed to be hosting the secretariat not only of the East African Association of Public Accounts, but also the 46<sup>th</sup> Commonwealth Parliamentary Association, (Africa Region). These are some of the things that every Kenyan must be proud of, no matter what their political beliefs are.

I want to join my good friend, the Leader of the Majority Party, in telling all of us that we are going to give a good account of ourselves. The fact that everyone is coming here is a show of respect for our country. The only way we can show we are behind our county is by appearing there and not only participating, but also delivering landmark papers that our visitors will carry home as something they will have found in Kenya.

Hon. Temporary Deputy Speaker, I wish my colleagues a nice weekend. What we have today, should tell the naysayers---People think that this House does not do any work but some of

us have been sitting here since 2.30 p.m. I am an electrical engineer and I believe some parts of the body are magnetic. I feared that some parts of my body would be sticking on the seat.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. (Eng.) Gumbo, which specific parts? We will have to get the advice of Hon. Nyikal and Hon. (Dr.) Pukose.

Hon. Members, I can guarantee you that the first speakers after this will be Hon. (Prof.) Nyikal and Hon. (Dr.) Pukose, with a view that they might advise us on electricity and its transmission.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, I feared that those electrical impulses--- In electrical engineering, we are told that every moving electrical field generates magnetism, and every moving magnetic field generates electricity. I feared that it would happen, but thank god we are still standing.

I want to thank my colleagues.

Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, I will give an opportunity to a few Members. I hope they will say very few words so that we can, probably, save time and give more hon. Members opportunity to speak on this.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker. I stand to support this Adjournment Motion. I would also like to thank my colleagues for sitting for a long time.

On those electrical impulses, the body has a negative feedback system, so that if something gets excessive, it cuts back on it. I can assure Hon. (Eng.) Gumbo that nothing will stick on anything.

In this session, we have passed very important Bills; just to mention two, the Companies Bill, that we have passed today---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. (Prof.) Nyikal, I am giving you a leeway, let us be specific to the Adjournment Motion before us. The niceties of what we have done should be water under the bridge. That is what Hon. Chepkong'a and the Leader of the Majority party have managed to tell the hon. Members. We should go straight to the Motion before us.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Speaker, at least I will say one and cut out the rest.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, I will allow you to mention one.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Speaker, I will mention the adoption of a Sessional Paper on social protection. This country needs to look at how we take care of the poor people, and the vulnerable amongst us. It is my hope that one day all Kenyans will have some stipend to live on, including those who are not employed.

It is important to have this Adjournment Motion because we have the 46<sup>th</sup> Commonwealth Parliamentary Association (CPA), (Africa Region), meeting here. It shows Kenya is a great country, and it is bound to be great. There are two problems that we are must resolve; corruption and ethnicity. If we can do that, our greatness will be seen.

Thank you, Hon. Temporary Deputy Speaker. When we adjourn, we will surely attend the conference. I can tell you that I, at least, will be there on Tuesday.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Let us have Hon. Pukose. Hon. Members, let us speak for just two minutes. We want many Members to speak.

**Hon. (Dr.) Pukose:** Thank you, Hon. Temporary Deputy Chairman for allowing me to support the Leader of the Majority Party in this Motion for Adjournment. This is a very opportune time.

Before I say that, allow me to thank Members as we have sat here together for the Companies Bill. This is very historic and I am happy to be part of history. Recently, we had the Global Entrepreneurship Summit (GES) and now we are having this CPA conference in this country. Soon, the Pope is also going to come here. That tells you that Kenya is a great country, and there is a lot of confidence in the Jubilee Government. I think this was reflected recently when President Obama made a speech. I know some people said that even Obama has joined Jubilee. There is enough room for everybody in Jubilee.

We want to tell our colleagues that there is no need of taking your constituency or area to the Opposition. Let us work together to build a greater Kenya for all of us. There is greatness in this Government and there is greatness in our nation.

With those few remarks, I want to thank you for allowing me to contribute to this Motion. All of Members are welcome to Jubilee.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let me give a chance to Hon. Makali Mulu because he is the Chairman of our CPA Chapter organising committee.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairman. Let me start by thanking the House leadership for giving the organising committee this level of honour by adjourning this House for a whole week, so that Members can participate in this 46<sup>th</sup> CPA regional conference.

On my behalf, as the chairman of the organising committee, on behalf of the committee and on behalf of the Kenyan Chapter Executive Committee, I want to extend a warm welcome to all Members, and say this is an important conference for Kenya. We expect about 450 participants, and it is going to give a very good opportunity to all of us to interact with our colleagues, who are Members of Parliament in other countries, share experiences and be able to discuss a way forward in terms of how we are going to make sure democracy is promoted all over the world. At the same time, the issue of sustainable development will be achieved in our country.

There are very interesting topics. The conference started today with what we call the “Commonwealth Women Conference”. Our women parliamentarians are expected to be at Safari Park because Her Excellency the First Lady of this country will be opening the forum officially. On Tuesday, His Excellency the President of this Republic will be opening the main conference. So, it is a big honour to Kenya to host such a big conference. As the chairman of the organising committee, I really feel humbled and honoured by this House for allowing Members to participate.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Hon. Gikaria. I see all the Members who are here have spoken. There is no point of giving them more chances.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker. I just want to echo what the Leader of the Majority Party has just said, that let us not have empty seats. We will be attending the conference, so that we can participate, learn and acquire a lot of knowledge in the one week.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. I will give the last opportunity to the Member for Turbo.



**An hon. Member:** No!

**The Temporary Deputy Speaker** (Hon. Cheboi): There will be no nos here, please.  
Hon. Member for Turbo.

**Hon. Busienei:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to second the Leader of the Majority Party.

**An hon. Member:** I want to second.

**The Temporary Deputy Speaker** (Hon. Cheboi): Well. Maybe you are fifth. Secondment was done.

**Hon. Busienei:** I want to say that the conference will be very important not only to this country, but also to the entire Africa.

Hon. Temporary Deputy Speaker, Members of the National Assembly and other Members from outside Kenya will have time to interact and exchange ideas.  
I support.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Cheboi): Well, hon. Members, the time being 7.45 p.m., this House stands adjourned until Tuesday, 18<sup>th</sup> August 2015 at 2.30 p.m.

The House rose at 7.45 p.m.