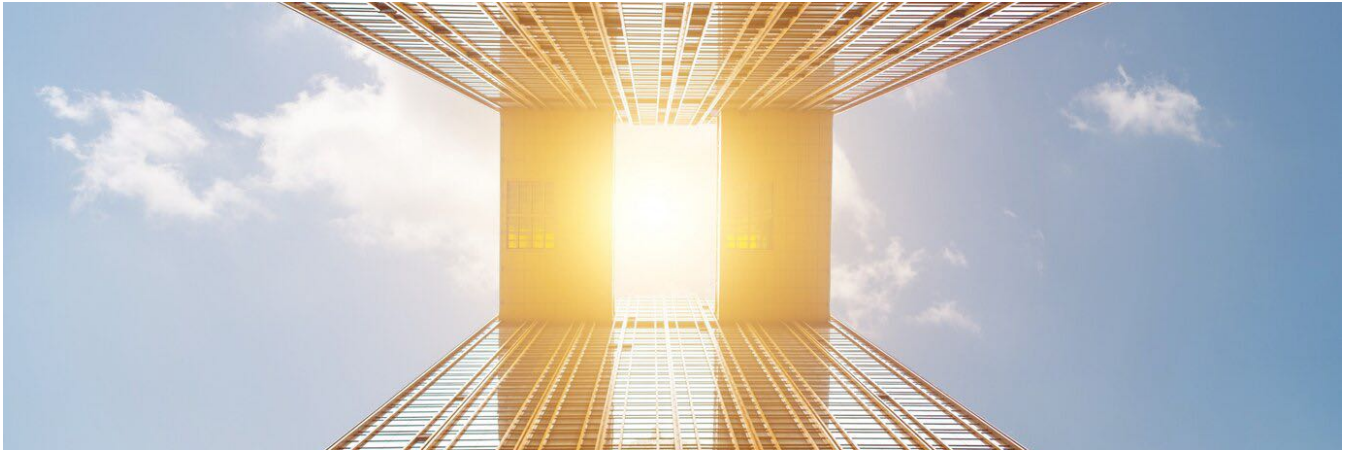




BI-WEEKLY

REGULATORY UPDATE

WEEK 3 & 4 APRIL 2024

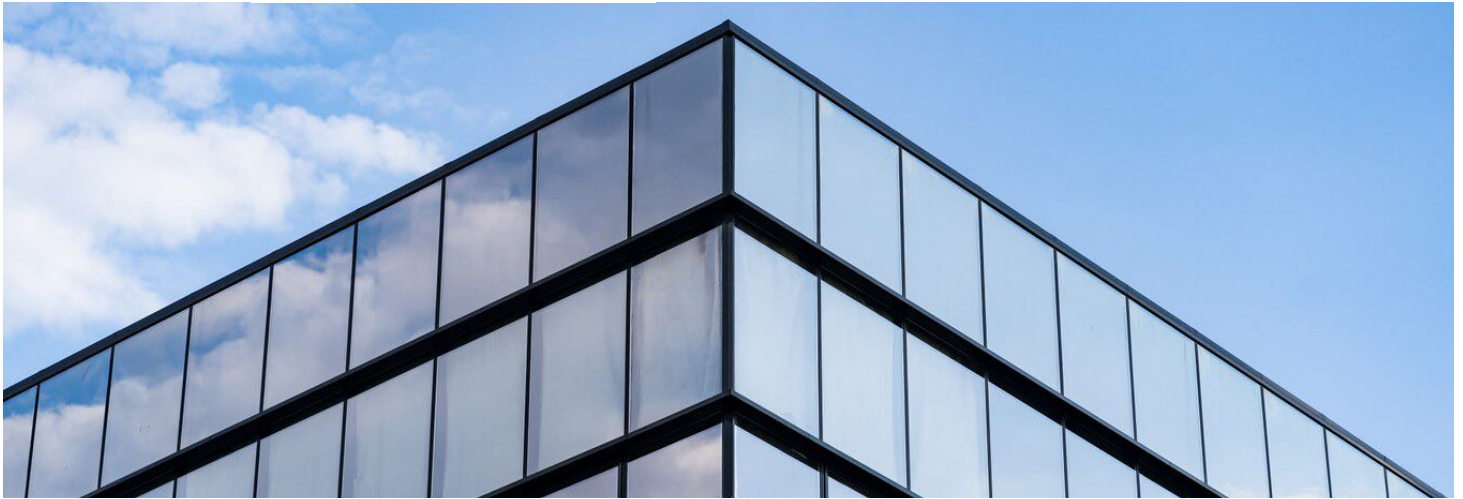


NATIONAL ASSEMBLY

Papers

The following are some of the Papers that were laid on the Table of the National Assembly for Consideration:

- Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its vetting of nominees for appointment as High Commissioners, Ambassadors, Permanent Representatives and Consuls-Genera.
- Competition and Consumer Protection Law Digest (1st Edition) from the Competition Authority of Kenya.
- Report of the Departmental Committee on Blue Economy, Water and Irrigation on its Consideration of the Senate Amendments to the Water (Amendment) Bill (National Assembly Bill No.33 of 2023).
- Reports of the Auditor-General and Financial Statements for various institutions for the Year ended 30th June 2023.
- Legal Notice No. 64 of 2024 relating to the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 and the Explanatory Memorandum from the National Treasury and Economic Planning.
- First Half National Government Budget Implementation Review Report for Financial Year 2023/2024 from the Office of the Controller of Budget.
- First Half County Governments Budget Implementation Review Report for Financial Year 2023/2024 from the Office of the Controller of Budget.
- Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Economic Partnership Agreement between the European Union and the Republic of Kenya.
- Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 10 of 2024).
- Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024 (Legal Notice No. 51 of 2024).
- Reports of the Departmental Committee on Communication, Information and Innovation on its consideration of:
 - a. The Kenya Information and Communication (Amendment) Bill, (National Assembly Bill No. 52 of 2022); and,
 - b. The Budget Implementation Monitoring for the Financial Year 2022/2023 for the State Department for ICT and Digital Economy; and the State Department for Broadcasting and Telecommunications.



COMMUNICATION

Passage of Bills

The National Assembly received messages from the Senate regarding the passage of the following Bills;

1. The Coffee Bill, (Senate Bill No. 10 of 2023);
2. The Prevention of Livestock and Produce Theft Bill, (Senate Bill No.12 of 2023);
3. The Parliamentary Powers and Privileges (Amendment) Bill, (Senate Bill No.37 of 2023);
4. The Food and Feed Safety Control Co-ordination Bill, (National Assembly Bill No.21 of 2023); and,
5. The Public Service (Values and Principles) (Amendment) Bill, (National Assembly Bill No.46 of 2022).

Mediation Committees on the Employment (Amendment) Bill and the Natural Resources (Benefit Sharing) Bill

The House was informed that the Speaker of the Senate appointed Senators to Mediation Committees to consider the Employment (Amendment) Bill (Senate Bill No. 11 of 2022) and the Natural Resources (Benefit Sharing) Bill (Senate Bill No. 6 of 2022). Following the appointment, the Mediation Committees will consider the respective Bills and submit their versions for consideration by the Houses of Parliament.

Motions

The following Notice of Motions were given on the Floor of the House:

1. **Formulation of Regulatory Framework on Artificial Intelligence in the Country urging the Government, through the Ministry of Information, Communication and Digital Economy to:**
 - a. formulate a regulatory framework and ethical guidelines for implementation of AI in the country to control potential misuse; and
 - b. develop and execute public awareness programme on AI to raise understanding of AI, foster transparency and promote responsible use of AI for the benefit of all.

- 2. Development of measures to mitigate digital exclusion.** The Motion seeks for the National Assembly to resolve that the Kenya Government, through the Ministry of Information, Communications and the Digital Economy, formulates a policy to:
- regulate internet billing by Internet Service Providers (ISPs) by providing metered billing of internet use based on consumption in order to mitigate exploitation and secure economic interests of internet users in line with Article 46 of the Constitution; and,
 - require the ISPs to develop and deploy quality metered billing systems capable of monitoring customer usage, convert to readable details and creating invoices based on consumption and align their metrics with the value the customers get from various internet services.
3. That the House adopts the Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Economic Partnership Agreement between the European Union and the Republic of Kenya, laid on the Table of the House on Tuesday, 23rd April 2024 and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act of 2012, approves the ratification of the Economic Partnership Agreement between the European Union and the Republic of Kenya.
4. That the House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024, laid on the Table of the House on Tuesday, 23rd April 2024 and pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024 (Legal Notice No. 51 of 2024) subject to publishing a corrigenda to correct the minor errors appearing in Regulations 11 and 16.
5. That the House adopts the Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Economic Partnership Agreement between the European Union (EU) and the Republic of Kenya, laid on the Table of the House on Tuesday 23rd April 2024 and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Economic Partnership Agreement between the European Union and the Republic of Kenya.
6. That the House adopts the Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its consideration of the ratification of the African Union Convention on Cross Border Cooperation (Niamey Convention), laid on the Table of the House on Thursday, 14th March 2024, and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act of 2012, approves the ratification of the African Union Convention on Cross Border Cooperation.

7. That the House adopts the Report of the Departmental Committee on Communication, Information and Innovation on the Budget Implementation Monitoring for the Financial Year 2022/2023 for the following the State Department for ICT and Digital Economy; and the State Department for Broadcasting and Telecommunications.
8. That the House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024, laid on the Table of the House on Tuesday, 23rd April 2024 and, pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024 (Legal Notice No.51 of 2024).

Petition

A petition on Amendment of the Penal Code to provide for the Offence of Sextortion was presented on behalf of concerned citizens of Kenya. The Petitioners pray that the National Assembly, through the Public Petitions Committee:

- a. Propose amendments to the Penal Code, Sexual Offences Act, and other relevant criminal laws to explicitly define sextortion as an offence, make clear provisions on penalties, support for victims and for connected purposes; and
- b. Take any other measures necessary and appropriate in the circumstances of this Petition to address the menace of sextortion to protect the rights and dignity of all citizens.

Bills

1. The following Bills were read for the First time and ordered to be referred to the relevant Committee.
 - The Coffee Bill (Senate Bill No.10 of 2023)
 - The Prevention of Livestock and Produce Theft Bill (Senate Bill No.12 of 2023) The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No.37 of 2023)
 - The Culture Bill (National Assembly Bill No.12 of 2024)
 - The Unclaimed Financial Assets (Amendment) Bill (National Assembly Bill No. 15 of 2024)
 - The Public Relations and Communication Management Bill (National Assembly Bill No. 17 of 2024)
2. The following Bills came up for Second Reading
 - The Public Service Internship Bill, (National Assembly Bill No. 63 of 2022)
 - The Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No.67 of 2023),
3. The following Bills were read the second time and committed to a Committee of the Whole House
 - The National Land Commission (Amendment) Bill, (National Assembly Bill No. 43 of 2023),
 - The County Licensing (Uniform Procedure) Bill (Senate Bill No.9 of 2022)
 - Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No.10 of 2024)
4. The Committee of the Whole House considered the below Bills that were approved with amendments and then after read a Third Time and accordingly passed.
 - The National Government Administration Laws (Amendment) Bill, (National Assembly Bill No.73 of 2023),
 - The National Land Commission (Amendment) Bill, (National Assembly Bill No.43 of 2023).

The House also considered the Senate amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023).



THE SENATE

Papers

The following are some of the Papers that were laid on the Table of the Senate for Consideration:

1. The Fisheries Management and Development (Beach Management Units) Regulations, Legal Notice No. 49 of 2024.
2. The Fisheries Management and Development (Inland Fisheries) Regulations, Legal Notice No. 50 of 2024.
3. The Fisheries Management and Development (Recreational Fisheries) Regulations, Legal Notice No. 51 of 2024.
4. The Fisheries Management and Development (General) Regulations, Legal Notice No. 54 of 2024.
5. The Fisheries Management and Development (Safety and Quality) Regulations, Legal Notice No. 55 of 2024.
6. The Fisheries Management and Development (Aquaculture) Regulations, Legal Notice No. 56 of 2024.
7. Reports of the Auditor-General on Financial Statements of Various Entities.
8. The Fisheries Management and Development (Fish Levy Trust Fund) Regulations, Legal Notice No.52 of 2024.
9. The Fisheries Management and Development (Marine Fisheries) Regulations, Legal Notice No 53 of 2024.
10. The Report of the Committee on Trade, Industrialization and Tourism, on its consideration of the Streets Vendors (Protection of Livelihoods) Bill (Senate Bills No. 41 of 2023).
11. First Half National Government Budget Implementation Review Report for Financial Year 2023/2024.
12. First Half County Governments Budget Implementation Review Report for Financial Year 2023/2024.
13. Sessional Paper No.3 of 2023 on the Kenya Policy on Public Participation.
14. Report of the Standing Committee on Finance and Budget on its consideration of the Division of Revenue Bill (National Assembly Bills No.14 of 2024).

Messages

Passage of Bills

The Senate received messages from the National Assembly regarding the passage of the following Bills;

1. The Statutory Instruments (Amendment) Bill (National Assembly Bills No.3 of 2024)
2. The National Assembly of the Land (Amendment) Bill (National Assembly Bills No. 40 of 2022)

Bills originating in the National Assembly are preceded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading.

The Kenya Policy on Public Participation

The Sessional Paper No. 3 of 2023 on the Kenya Policy on Public Participation was laid on the Table of the Senate for consideration. The Paper was committed to the Standing Committee on Justice, Legal Affairs and Human Rights (JLAC), for consideration. The Committee will be required to scrutinize the Paper, undertake public participation, and submit a report to the Senate within 30th days.

Motions

The following Notice of Motions were given on the Floor of the House:

1. Development of a Law for Social Risk Management in Infrastructure Development Projects in Kenya. The Motion seeks for the Senate to resolve that:
 - The National and County Governments develop a Social Risk Management Policy that outlines the standards, guidelines and procedures for guiding infrastructure and other development projects both at the national and county governments; and
 - The national executive establishes an independent multi-sectoral agency under the authority of the Cabinet Secretary in charge of Social Security and Protection to design a mechanism that can factor in the inclusion of Social Impact Assessments standards and monitor their implementation in infrastructure and other development projects in Kenya.
2. Status of Pending Bills in Counties. The Motion seeks for the Senate to:
 - Recommend that all County Governments pay verified pending bills amounting to less than Kshs1 Billion by the end of this financial year and those above Kshs1 billion by the end of the financial year 2024/2025; and
 - Resolve that;
 - a. County Governments prioritize payment of pending bills as a first charge on the County Revenue Fund failure to which the subsequent quotas budget releases will not be done;
 - b. County Governments shall only pay pending bills contained in their respective procurement plans
 - c. Supplementary budgets for county governments are prepared in the 3rd Quarter to curb instances of arbitrary re-allocations out of the approved budget estimates; and
 - d. County governments shall conduct public participation while formulating supplementary budgets, failure to which the Controller of Budget (CoB) shall not approve the supplementary budgets.

Bills

5. The following Bills were read for the First time and ordered to be referred to the relevant Senate Committee for consideration.
 - The Statutory Instruments (Amendment) Bill (National Assembly Bills No.5 of 2023)
 - The Election Offences (Amendment) Bill (Senate Bills No. 9 of 2024)
 - The Statutory Instruments (Amendment) Bill (Senate Bills No. 10 of 2024)
 - The Elections (Amendment) Bill (Senate Bills No.11 of 2024)
 - The Political Parties (Amendment) Bill (Senate Bills No.13 of 2024)
 - The Land (Amendment) Bill (National Assembly Bills No.40 of 2022)
6. The following Bills came up for Second Reading
 - The National Rating Bill (National Assembly Bills No.55 of 2022)
 - Maternal, Newborn, and Child Health Bill, (Senate Bills 17 of 2023)
 - The Gambling Control Bill, (National Assembly Bills No.70 of 2023)
 - The County Governments (Amendment) Bill (Senate Bill No.25 of 2023)
 - The Division of Revenue Bill (National Assembly Bill No.14 of 2024)
7. The following Bills were read the second time and committed to a Committee of the Whole
 - The Tea (Amendment) Bill (Senate Bills No.1 of 2023)
 - The Conflict of Interest Bill (National Assembly Bills No.12 of 2023)
 - The National Rating Bill (National Assembly Bills No.55 of 2022)
 - The Gambling Control Bill (National Assembly Bills No.70 of 2023)
8. The Committee of the Whole House considered the below Bills that were approved with amendments and thereafter read a Third Time and accordingly passed.
 - The County Boundaries Bill (Senate Bills No.6 of 2023)
 - The Sugar Bill (National Assembly Bills No. 34 of 2022)
 -

Statements & Questions

- Statements were sought from the Standing Committee on Health regarding;
 - a. the on-going strike by medical personnel in the country
 - b. the implementation of the Signed Collective Bargaining Agreements (CBA) by the Government.
 - c. emergent concerns regarding the safety, profile, efficacy, and known adverse effects of the Messenger Ribonucleic Acid (mRNA) COVID-19 vaccines.
 - d. the outstanding bills owed to faith-based health facilities by the National Health Insurance Fund.
- A Statement was sought from the Standing Committee on Labor and Social Welfare regarding difficult working conditions and the abuse of workers in Export Processing Zones (EPZ).
- A Statement was sought from the Standing Committee on Land, Environment and Natural Resources regarding the dumping of nuclear waste in the North-Eastern and Upper-Eastern regions of Kenya by multinational oil exploration companies in the 1980s.
- A question was raised to the Cabinet Secretary for Health regarding the alleged medical insurance fraud.



UPDATES FROM THE KENYA GAZETTE

Acts, 2024

1. The Statute Law (Miscellaneous Amendments) Act, 2024

Legislative Supplements

1. The Affordable Housing Act—Commencement
2. The Fisheries Management and Development (Beach Management Units) Regulations, 2024
3. The Privileges and Immunities (Oxfam International) Order, 2024

National Assembly Bills, 2024

1. The Kenya Roads Board (Amendment) Bill, 2024
2. The Salaries and Remuneration Commission (Amendment) Bill, 2024
3. The Medical Social Workers Bill, 2024

Senate Bills, 2024

The Labour Migration and Management Bill, 2024

The Constitution of Kenya (Amendment) Bill, 2024

The Fisheries Management and Development Bill, 2024

The County Governments Additional Allocations Bill, 2024

Sector Updates

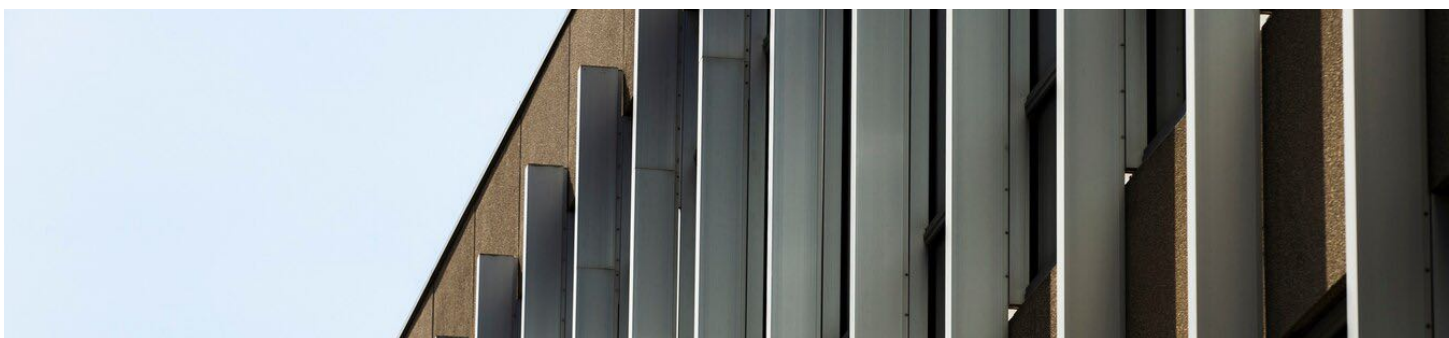
1. The National Treasury and Economic Planning published the Statement of Actual Revenues and Net Ex chequer Issues as at 28th March, 2024.
2. The Agriculture and Food Authority proposes to grant a letter of comfort to construct a Sugarcane Mill to Soit Sugar Company Limited, at Transmara/Kimintet Narok County.
3. The Capital Markets Authority published the list of licensees and approved institutions including Derivatives Brokers, Investment Banks, Stockbrokers, Non-Dealing Online Foreign Exchange Broker, Online Foreign Exchange Money Manager, Authorised Securities Dealers, Fund Managers, Investment Advisers, Authorised Depositories, Reit Managers, Reit Trustees, Authorized Real Estate Investment Trusts (REITS), Approved Collective Investment Schemes, Coffee Brokers and Employee Share Ownership Plans (ESOPS) Operated by Listed Companies as at April, 2024.

4. The Competition Authority issued a Cease and Desist order against the Rural Private Hospitals Association of Kenya (RUPHA) following its issuance of a circular making recommendations on prices, fees and terms of trade to its members and directing its members to reduce the acceptance of the National Hospital Insurance Fund (NHIF) policy as a means of payment by sixty (60) percent, effective from the 15th December, 2023. RUPHA, its agents and members were directed to, with immediate effect, cease and desist from implementing the said circular and refrain from making further recommendations regarding prices, fees and terms of trade to any class of its members until the ongoing investigation by the Authority is concluded.
5. The Canadian Overseas Packaging Industries Limited (the Offeror) has made a take-over offer to acquire up to 100% of the issued ordinary shares in the share capital of East African Packaging Industries Limited (EAPI) with Company No. C.33/71 for a cash consideration in accordance with the Companies Act, No. 17 of 2015, Laws of Kenya (the Companies Act).

From the Counties

Nairobi City County – The County published the waived fees and charges for the general retail alcoholic licenses for the small bar, medium bar, bar and restaurant categories for Financial Year 2023/2024

Mombasa County – The County waived all accumulated and preceding penalties and/or interest on parking for a period between 8th April, 2024 and 30th April, 2024



GENERAL UPDATES

Draft AI Code of Practice

The Kenya Bureau of Standards (KEBS) published the draft Information Technology - Artificial Intelligence - Code of Practice for AI Applications for public consultation. The draft, provides a set of recommendations intended to help organizations develop, provide, or use Artificial Intelligence (AI) systems responsibly in pursuing objectives and meet applicable requirements, obligations related to interested parties and expectations from them.

The draft Code proposes to be applicable to any organization, regardless of size, type and nature, that provides or uses products or services that utilize AI systems. It includes the following:

- approaches to establish trust in AI systems through transparency, explainability, controllability, etc.
- engineering pitfalls and typical associated threats and risks to AI systems, along with possible mitigation techniques and methods; and
- approaches to assess and achieve availability, resiliency, reliability, accuracy, safety, security and privacy of AI systems.

Comments on the Draft Code should be submitted to the Managing Director, KEBS by 13th June 2024.

Code of Ethics for business in Kenya

The Global Compact Network Kenya (GCNK), in collaboration with the Kenya Association of Manufacturers (KAM) and the Kenya Private Sector Alliance relaunched the Code of Ethics for Business in Kenya. The Code of Ethics for Business in Kenya is a guide to ethical business practices in Kenya. It seeks to promote and enhance business ethics, aligning with the Ten Principles of the UN Global Compact in Human Rights, Labour Standards, Environment, and Anti-Corruption.

Public Notice on postal courier services

The Communications Authority of Kenya (CA) issued a Notice on the illegal provision of postal courier services. In the Notice, CA indicates, "it has come to the attention of the Authority that a number of authorised public service vehicles and e-commerce players are offering courier services without obtaining the requisite licence from the authority." A person operating without the requisite licenses commits an offence and shall be subject to penalties upon conviction.

Draft Banking (Penalties) Regulations, 2024

The Draft Regulations are designed to enforce penalties for violations related to the Banking Act, its associated regulations, Prudential Guidelines, and directions issued by the Central Bank of Kenya (CBK). The Regulations propose hefty fines for financial institutions that commit various offenses such as opening, relocating, or closing banks and branches without prior approval from the CBK.

The Statute Law (Miscellaneous Amendment) Act 2024

The Act gazetted on 26th April, 2024 amends various statutes such as:

- The Value Added Tax Act to remove denatured ethanol from the list of VAT-exempt supplies which creates an economic safety net and competitive edge for local denatured ethanol manufacturers, particularly millers and sugar manufacturers, who face challenges with cheaper imports. It also exempts the supply of gas meters from VAT to enhance access to clean energy by low-income households.
- Industrial Training Act to align the remittance date of the training levy with PAYE remittance to the Kenya Revenue Authority, aiming to boost employer compliance. The levy will fund intern wages and support technical and vocational education training and higher education operations.

Online Food and Groceries Delivery Platforms Market Study

The Competition Authority of Kenya conducted a Market Study on the Online Food and Groceries Delivery Platforms. The study findings reveal a lack of explicit regulations on online platforms in Kenya, underscoring the urgent need to address deficiencies in the regulation of digital platforms comprehensively. Key players in the Kenyan online food and grocery delivery market include Glovo, Jumia Food, Uber Eats, Bolt Food, and Jumia. Additionally, major retail chains such as Carrefour, Naivas, Quickmart, and Chandarana operate their own platforms for online groceries' delivery. Among other things, the study recommends continuous monitoring of the online food and groceries market by the CAK to identify and address anticompetitive behavior. It also suggests analyzing contract terms between platforms and users to identify issues related to superior bargaining positions and collaboration with other relevant regulators to address e-commerce-related consumer concerns and data privacy issues, along with advocacy initiatives to encourage self-regulation among platforms through the development and implementation of codes of conduct.



The Team



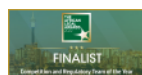
Ombo Malumbe
Partner
email: om@onganyaombo.com
direct: +254 724 026 355
office: +254 208 400 629

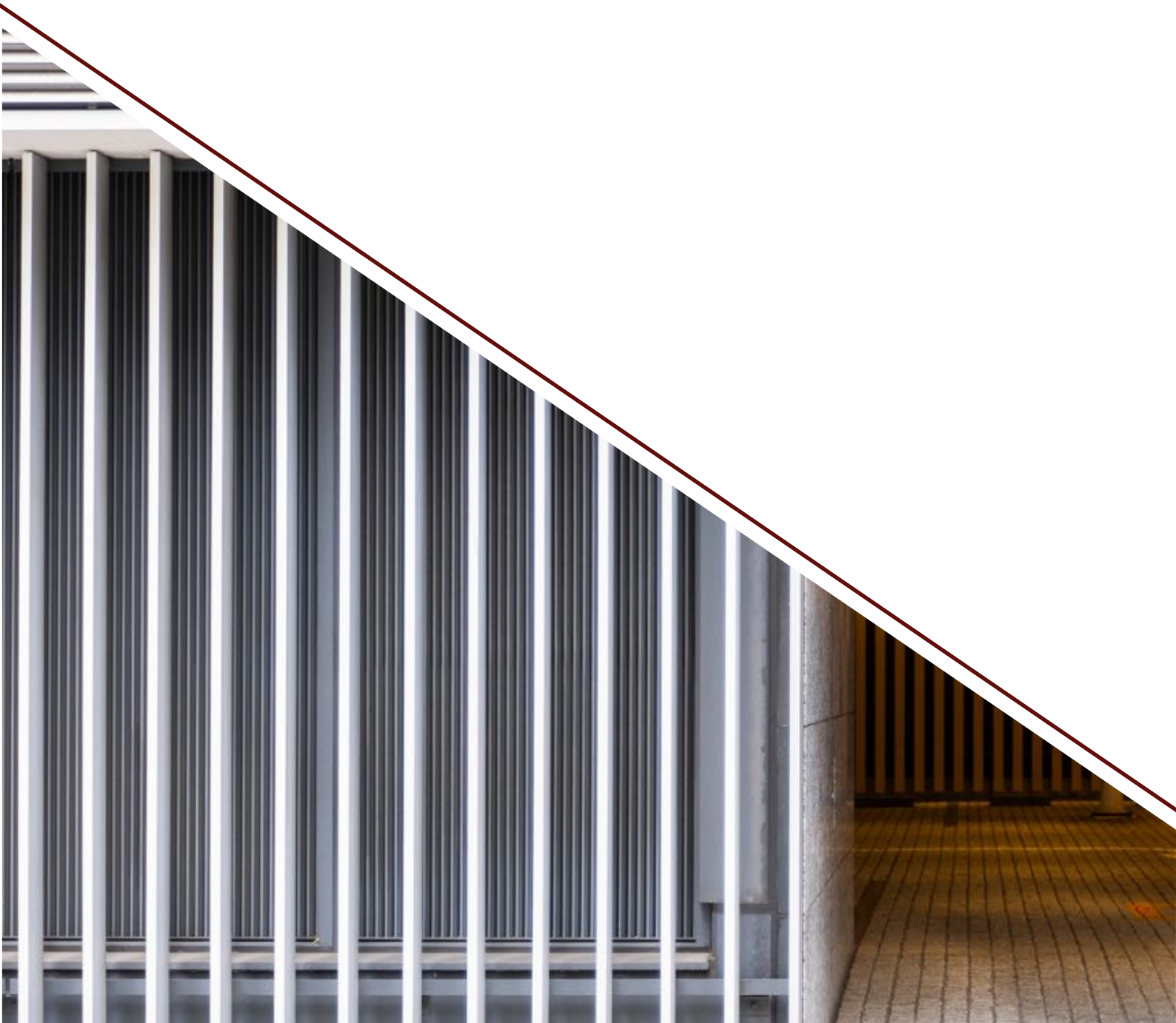


Faith Ngarama
Associate
email: nf@onganyaombo.com
direct: +254 729 932 195
office: +254 208 400 629



Emmanuel Kahero
Legal Assistant
email: ek@onganyaombo.com
direct: +254 785 178 063
office: +254 208 400 629





**4 th Floor, Mayfair Suites,
Parklands Gardens, Parklands Rd.,
Nairobi, KE.**
t: +254 208 400 629
e: hello@onganyaombo.com