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ICPAK POSITION ON ENACTMENT OF THE COMPANIES BILL 2015

The Institute of Certified Public Accountants of Kenya (ICPAK) applauds the government for the ongoing efforts to reform various laws relating to the administration and regulation of commercial business and financial matters. We note that the aim of these reforms is to review, modernize and simplify the laws to provide an enabling environment to doing business. Renewed impetus for the reform of commercial laws has been anchored on the government's far-reaching policy objectives namely the Vision 2030 and the Economic Recovery Strategy for Wealth and Employment Creation.

Indeed, two weeks ago the National Assembly debated and passed the Companies Bill 2015 and the Insolvency Bill 2015 which are now waiting for Presidential assent to be enacted into laws.

The Institute is in no doubt that these noble initiatives that the government has undertaken of law reforms especially on the overarching law; the Companies Bill 2015 would lead to comprehensive reforms on the business environment especially in driving economic development going forward.

Of great interest to the Institute is the Companies Bill 2015 with regard to its details and structure in providing clearer divisions between the several aspects of a company law. Along with this, it modernizes company law by recognizing the use of Information Technology.

Equally, the Bill provides accountability mechanisms in management of resources especially for quoted companies. For instance, the Bill provides that the Directors of a quoted company must ensure that the company has an Audit Committee appointed by the shareholders of a size and capability appropriate for the business conducted by the company.

On the other hand, the Institute is of the considered opinion that the legislative process, especially in regard to the Companies Bill 2015 was done in haste without building consensus from industry players on some of the contentious issues therein. Key among these areas is the classification of 'a **small company regime**'.

Whereas the definition of a small Company's regime is important in the administration of companies in Kenya, the qualifying conditions for such companies could end up stifling economic development.

The classification is based on a monetary threshold of a turnover of not more that Kshs.50 million and net assets of not more than Kshs.20 million. We recommend that the threshold for turnover be based on Kshs.5million as per the VAT Act. This is because the threshold still remains high and many companies will be locked out from being audited. This puts small businesses at risk because they will not access prudent financial advisory on the health of their businesses.

It is our considered opinion that this classification has implications on reporting and auditing requirements of the affected companies. It could negatively affect the economy if "small companies" are exempted from these crucial requirements. This is based on the fact that the capital providers (shareholders and lenders) and the Kenya Revenue Authority are expected to require reliable financial information from these businesses to assess their performance and tax obligations while the proposed thresholds will make nearly sixty percent of Kenyan companies exempt from audit. What will financial institutions rely on to give credit to the Small and Medium sized Companies who fall under this category? Will these exemptions avail credit opportunities to "*Wanjiku & Company''*. Will financial institutions increase the cost of funds to cater for the risk factor?

The Institute further takes cognisant of the fact that tax assessment is based on audited financial statements. With a national budget of Kshs.2.2trilion, the law reforms alongside other tax reforms that will make tax administration easy, the Companies Bill 2015 ought to have considered the threshold factor. Tax collectability will remain a challenge when tax assessment is left at the discretion of the business owner without professional advice on tax planning and compliance. The Alternative Dispute Resolution (ADR) that was launched a month ago may face implementation challenges as it seeks to settle tax disputes within 45 days. Without audited financial statements this may be a pipe dream as business performance will not have been certified for information reliability.

The Institute in addition commends the National Assembly for passing amendments to require the Cabinet Secretary in charge of Finance for the time being, to seek recommendation from ICPAK before recognizing foreign qualifications for purposes of auditing financial statements. This is a recognition that the accounting profession has become of age and many professionals remain unemployed. We believe it is the President's desire to create employment opportunities to Kenyan citizens. Authorizing foreigners to practice in

Kenya without consultations with ICPAK which licenses accounting practitioners (auditors) would have jeopardized the local CPA qualification which has taken several decades to be where it is today.This is a move towards the right direction not just for accountants but for other professions as this is the best practice all over the world.

Moving forward, we implore upon the President to reconsider assenting to the Bill until there is consensus from all the industry players on contentious provisions.

The Institute, based on the foregoing, further recommends that the following amendments should be considered before enactment of the Bill;

- The Small Companies Regime: - Revise the levels of gross turnover to Kshs.5 million. This harmonizes with KRA threshold for VAT registration Under Section 34 of the VAT Act;
- Revise the Bill to provide a minimum set of qualifications and competencies for members to Audit Committees. This ensures that the audit committee is well grounded on matters of finance and accountability**.** The Committee should have at least one member of ICPAK in good standing.

It is our hope that the enactment into law of the Companies Bill and other business laws would lead to comprehensive reforms of the business environment. Without a doubt, there is consensus that the current archaic laws governing businesses establishment, management and exit have been a significant hindrance to the development of the private and public sectors, and the economy at large.

FCPA Fernandes Barasa,

Chairman, Institute of Certified Public Accountants of Kenya

STANDARD BRIEF OF THE INSTITUTE>>*The Institute of Certified Public Accountants of Kenya (ICPAK) is the professional organization for Certified Public Accountants in Kenya established in 1978 by the Accountants Act, CAP 531 which has since been repealed and replaced by the Accountants Act No. 15 enacted in 2008. Since 1978, ICPAK has been dedicated to development and regulation of the accountancy profession in Kenya so as to enhance its contribution and that of its members to national economic growth and development.*