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KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE

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REPORT ON THE

BANKING (AMENDMENT) BILL 2001

PARLIAMENT BUILDINGS
NAIROBI

October 2001

INTRODUCTION

Mr. Speaker, Sir, I am pleased to present to the House a report of the Departmental Committee on Finance, Planning and Trade on the Banking (Amendment) Bill, 2001.

Some of the functions of Departmental Committees as established under Standing Order 151 are:

- (i) to study and review all legislation after first reading, subject to the exemptions under Standing Order 101A(4);
- (ii) to investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister;
- (iii) to make reports and recommendations to the House as often as possible including recommendation of proposed legislation.

Mr. Speaker Sir, the Banking (Amendment) Bill, 2001 was referred to the Committee on July 04, 2001 upon a motion moved by the Minister pursuant to the provisions of Standing Order 101A(1).

The Committee commenced deliberations on the Bill on 28th August, 2001 and held three sittings. The Minister for Finance accompanied by the Permanent Secretary attended one sitting of the Committee and gave an overview of the Bill.

The Committee also invited the Commissioner General, Kenya Revenue Authority and his team together with the Governor of Central Bank of Kenya and they gave invaluable insight into the thinking that went into the proposals in the Bill.

OBJECTIVES OF THE BILL

The Banking Amendment Bill 2001 has the following objectives:

- (a) Proposes amendments to section 15 of the Act to remove restrictions on the operations of mortgage finance companies in order to diversify their business activities to enable them compete with other institutions.

- (b) Proposes amendments to section 31 of the Act to facilitate information between the Central Bank and Institutions licensed under the Act.
- (c) Proposes amendments to section 36 of the Act to further elaborate on the powers of the Deposit Protection Fund Board as a body corporate and also make provisions for the procedures of the Board.
- (d) Proposes to introduce a new section 39A to impose a time limit on the period within which claims by depositors may be made to the Board.
- (e) Proposes to make amendments to the Building Societies Act.

After deliberations on the Banking (Amendment) Bill 2001, the Committee made the following observations.

- CLAUSE 9 & 10**
- (i) That the Bill is not a miscellaneous Amendment Bill and therefore cannot deal with both the Banking Act and the Building Societies Act.
 - (ii) That Building Societies all over the world have a specific role to play quite distinct from that played by banks. This proposal is therefore a major departure and should be brought to the House in a Sessional Paper.
 - (iii) That if this amendment Bill is passed, it would confer privileges to building societies for which the banks pay dearly due to the required initial capital out lay. If building societies want to do banking, they should follow proper procedures as stipulated in the Banking Act.
 - (iv) The Registrar of Societies should be called upon to implement the law as it relates to Building Societies.

RECOMMENDATION


Committee recommends that Minister prepares amendments to the Building Society's Act separately from the Banking Act to facilitate a comprehensive review.

CONCLUSION

The Committee recommends that the House adopts the Banking Amendment Bill 2001 together with the recommendations contained in the Committee's report.

Mr. Speaker Sir, I wish to take this opportunity on behalf of the Committee to record our gratitude to the Minister for Finance and his staff together with officials of Kenya Revenue Authority and the Governor, Central Bank of Kenya for the assistance they accorded the Committee.

Mr. Speaker Sir, the minutes of the sittings of the Committee are hereby attached to the report.

Signed 

Hon. Simeon M. Mkalla, MP
Chairman, Departmental Committee on Finance, Planning and Trade

Date 18TH OCTOBER, 2001

**MINUTES OF THE ONE HUNDRED AND FORTY-FOURTH SITTING
OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING
AND TRADE HELD ON TUESDAY, AUGUST 28, 2001 IN COMMITTEE
ROOM NO. 7 AT 2.30 P.M.**

PRESENT Hon. Soita Shitanda, MP - Ag. Chairman
 Hon. David Mwiraria, MP
 Hon. Winston Ayoki, MP
 Hon. Harrison Odongo, MP
 Hon. Onesmus Mboko, MP
 Hon. Mohammed Galgalo, MP
 Hon. Jimmy Ang'wenyi, MP

ABSENT WITH APOLOGY

 Hon. Simeon Mkalla, MP - Chairman

ABSENT WITHOUT APOLOGY

 Hon. John Michuki, MP
 Hon. Adan Keynan, MP
 Hon. Samuel Kiminza, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

 A. K. Thurania - First Clerk Assistant

MIN. NO.607/2001 - **CONFIRMATION OF MINUTES**

Minutes of the previous five sittings were confirmed by Members present and signed by the Chairman after being proposed and seconded by the following Members.

- (i) Minutes of the 137th sitting held on June 29, 2001 were proposed by Hon. Ayoki and seconded by Hon. Mboko.
- (ii) Minutes of the 138th sitting held on July 12, 2001 were proposed by Hon. Mboko and seconded by Hon. Ayoki.

- (iii) Minutes of the 139th sittings held on July 13, 2001 were proposed by Hon. Odongo and seconded by Hon. Mwiraria.
- (iv) Minutes of the 140th sitting held on July 23, 2001 were proposed by Hon. Galgalo and seconded by Hon. Angwenyi.
- (v) Minutes of the 141st sitting held on July 26, 2001 were proposed by Hon. Angwenyi and seconded by Hon. Ayoki.

MIN. NO.608/2001

MATTERS ARISING

1. **139th Sitting**

The Committee noted that the Commissioner of Value Added Tax (VAT) should be called upon to withdraw the requirement for traders to maintain an up date inventory of all the items they sell.

The Committee observed that the requirement was not only tedious and time consuming but also that unscrupulous VAT officers might use it to extort money from traders.

The date of commencement i.e. September 01, 2001 means that the traders were not given enough time and were not educated to enable them start the exercise effectively.

Later when the Ag. Chairman of the Committee called the Commissioner for VAT requesting him to suspend the matter, the Commissioner indicated that various consultations and representations had been made on the issue and that the government had decided to shelve it until January 2002.

The Committee further resolved to schedule a meeting with the Commissioner for VAT as there are other contentious issues such as delays in VAT refunds that need to be exhaustively discussed

2. **140th Sitting**

The Committee resolved to request the Ministry of Trade and Industry to organise a one day Workshop on Trade Agreements and Protocols that the Ministry has signed on behalf of this country. There was also need to discuss the operations of the Weights and Measures Department as its officials are frustrating and harassing small scale business people in the rural areas during their inspections of weights and measures.

MIN. NO. 609/2001 **CONSIDERATION OF THE BANKING AMENDMENT BILL**

The Committee resolved to have a meeting with the Minister for Finance in which the following issues would be discussed.

1. The Banking Amendment Bill and what it is intended to achieve.
2. Recommendation by the Committee that Banks invest between 35 and 40% of their deposits within their areas of operation.
3. Reduction of the minimum capital requirement for starting new banks.
4. That the Minister gives a breakdown of how much money banks invest in Treasury bills and the effect these amounts would have on the economy.

MIN. NO. 610/2001 **ADJOURNMENT**

And there being no other business, the Chairman adjourned the sitting at five o'clock.

Confirmed signed

Date 6th Sept 2001

MINUTES OF THE ONE HUNDRED FORTY NINETH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS ON TUESDAY, SEPTEMBER 19, 2001 AT 10.00 A.M.

PRESENT: The following Members of the Committee were present:

The Hon. S.M. Mkalla, MP - Chairman
The Hon. Soita Shitanda, MP
The Hon. Onesmus Mboko, MP
The Hon. Harrison Odongo, MP
The Hon. W.O. Ayoki, MP
The Hon. J.N. Michuki, MP
The Hon. M.A. Galgallo, MP

ABSENT WITH APOLOGY

The Hon. Samuel Kiminza, MP
The Hon. Adan Keynan, MP
The Hon. David Mwiraria, MP
The Hon. Jimmy Angwenyi, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Ms. C.M. Mwambua - Principal Clerk Assistant

MINISTRY OF FINANCE

NAME

DESIGNATION

Philip Odeny - Senior Assistant Commissioner –VAT
Maurice O. Ochieng - Senior Assistant Commissioner – Income Tax
Kenneth M.S. Levi - Deputy Commissioner VAT
Stanley Ngaine - Director, Fiscal and Monetary Affairs Department
Samuel Bundotich - Financial Secretary
Nahashon N. Nyagah - Governor, Central Bank of Kenya (CBK)
John Murugu - Director, Bank supervision

Hon. Chrisanthus B. Okemo - Minister for Finance
Mwaghazi Mwachofi - Permanent Secretary, Ministry of Finance

MIN.NO.625/2001 **MEETING WITH THE MINISTER FOR FINANCE
ON THE BANKING (AMENDMENT) BILL**

The Committee was taken on a detailed clause by clause analysis of the Banking Amendment Bill by the Governor of Central Bank and the Minister for Finance as follows:-

- Clause 2: agreed to the definition of “Minister” for the purposes of the Act as the Minister for the time being responsible for Finance.
- Clause 3: The Committee was informed that this Clause sought to amend section 15 of the Banking Act to remove restrictions on the operations of the mortgage finance companies in order to diversify their business activities and thus compete with other institutions.
- Clause 4: That Section 31 of the Act should be amended to facilitate exchange of information regarding the credit worthiness of borrowers between Central Bank and other banking institutions – seeks legal Cover to facilitate sharing of information between banks to assess credit worthiness of borrowers (also allowing sharing of information between Central Banks within and outside Kenya, and other banking institutions).
- Clause 5: agreed to
- Clause 6: agreed to
- Clause 7: agreed to
- Clause 8: agreed to

Clauses 9-10: agreed to

Clause 11: agreed to

Other Observations

The Committee was informed:-

- (i) that inspections had proved that Building Societies and Banks performed the same functions i.e. financing of short term loans etc and that they were unable to operate under the Building Societies Act – hence the move to make a gradual approach to bring them to operate under the Banking Act.
- (ii) that while the Central Bank Kenya had the capacity to inspect, identify problems and even close Building Societies, it had no powers to do so. That the powers to take action on Building Societies lay with the Registrar of Building Societies.
- (iii) that Central Bank of Kenya's role over Building Societies was only supervisory over the operations of Building Societies, while the capacity to act on these Societies was with the Registrar of Building Societies under the Attorney General's office.
- (iv) that amendment of the Banking Act or Scrapping of the Building Societies Act will bring the Societies aboard the Banking Act.

COMMITTEE'S REACTIONS

The Committee made the following observations:-

- CLAUSE 9 & 10**
- (i) That the Bill is not a miscellaneous Amendment Bill and therefore cannot deal with both the Banking Act and the Building Societies Act.
 - (ii) That Building Societies all over the world have a specific role to play quite distinct from that played by banks.

This proposal is therefore a major departure and should be brought to the House in a Sessional Paper.

- (iii) That if this amendment Bill is passed, it would confer privileges to building societies for which the banks pay dearly due to the required initial capital out lay. If building societies want to do banking, they should follow proper procedures as stipulated in the Banking Act.
- (iv) The Registrar of Societies should be called upon to implement the law as it relates to Building Societies.

MIN.NO.626/2001

**RESPONSE BY THE MINISTER FOR FINANCE
TO ISSUES RAISED BY THE COMMITTEE ON
THE BANKING AMENDMENT BILL**

1. Should Banks invest 35-40% of their deposit within their areas of operation?

The Committee was informed that it was imprudent to entrench this view in the law since some of the areas where the banks operate may lack the borrowing capacity as required by law, thereby making the implementation difficult. However special purpose institutions could serve the purpose.

2. Reduction of the minimum capital requirement for starting up new banks – The Committee was informed that action had already been taken to address this issue, in that the requirement has already been frozen and that a miscellaneous amendment was underway to provide guidelines on the matter.

MIN.NO.627/2001

**MEETING WITH THE COMMISSIONER
GENERAL, KENYA REVENUE AUTHORITY**

The Committee resolved that the meeting with the Commissioner General – KRA to respond to the issues raised by the Committee during its consideration of the Finance Bill be postponed to

Monday, October 08, 2001 at 2.30 p.m. in Committee Room No.7,
Parliament Buildings.

MIN.NO.628/2001 **ADJOURNMENT**

And there being no other business, the chairman adjourned the sitting at
Thirty minutes past one O'clock until Monday, October 08, 2001.

Confirmed.....*Signed*.....
Chairman

Date.....*15th October 2001*.....

MINUTES OF THE ONE HUNDRED FIFTY SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE HELD ON MONDAY, OCTOBER 15, 2001 IN COMMITTEE ROOM NO. 9 AT 2.30 P.M.

PRESENT: Hon. Simeon Mkalla, MP - Chairman
Hon. Onesmus Mboko, MP
Hon. John Michuki, MP
Hon. Samuel Kiminza, MP
Hon. Jimmy Angw'enyi, MP

ABSENT: Hon. David Mwiraria, MP
Hon. Adan Keynan, MP
Hon. Winston Ayoki, MP
Hon. Mohamed Galgalo, MP
Hon. Harrison Odongo, MP
Hon. Soita Shitanda, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

A. K. Thurania - First Clerk Assistant

MIN. NO.636/2001 - **CONFIRMATION OF MINUTES**

Minutes of the previous four sittings were confirmed by the Members present and signed by the Chairman after being proposed and seconded by the following Members.

- (i) Minutes of the 148th sitting held on 18 September 2001 were proposed by Hon. Mboko and seconded by Hon. Michuki.
- (ii) Minutes of the 149th sitting held on 19th September 2001 were proposed by Hon. Michuki and seconded by Hon. Mboko.
- (iii) Minutes of the 150th sitting held on 4th October 2001 were proposed by Hon. Mboko and seconded by Hon. Kiminza.
- (iv) Minutes of the 151st sitting held on 8th October 2001 were proposed by Hon. Angw'enyi and seconded by Hon. Mboko.

MIN. NO.637/2001 - **MATTERS ARISING**

- (i) **149TH Sitting**

Min. No. 625/2001

The Committee noted that the minutes of the 149th sitting as presented were not a true record of the proceedings of that day.

The Committee therefore directed the Secretariat to redo the minutes to include the following missing points:-

BANKING (AMENDMENT) BILL 2001

- CLAUSE 9 & 10**
- (i) That the Bill is not a miscellaneous Amendment Bill and therefore cannot deal with both the Banking Act and the Building Societies Act.
 - (ii) That Building Societies all over the world have a specific role to play quite distinct from that played by banks. This proposal is therefore a major departure and should be brought to the House in a Sessional Paper.
 - (iii) That if this amendment Bill is passed, it would confer privileges to building societies for which the banks pay dearly due to the required initial capital out lay. If building societies want to do banking, they should follow proper procedures as stipulated in the Banking Act.
 - (iv) The Registrar of Societies should be called upon to implement the law as it relates to Building Societies.

(ii) **150th Sitting**

Min.No.629

The Committee further noted that the minutes of the 150th sitting did not include observations and comments made by the Committee. The Secretariat was directed to make a note for future minutes.

(iii) **151st Sitting**

Min.No.632/2001

On the issue of the effects of VAT on the Tourism Industry, the Committee responded to the Minister's comment in which he said that the Tourism Industry should undertake aggressive marketing and noted that over fifty five hotels at the Coast had already closed down. This in effect means that the Industry has no capacity to sustain itself in order to mount the marketing campaigns.

The Committee therefore recommended that issues such as insecurity, lack of infrastructure and high operational costs should be urgently addressed by the government.

The Minister for Finance, Hon. Chris Okemo, EGH, MP appeared before the Committee accompanied by the following officers from the Ministry and the Kenya Revenue Authority:

Mr. Mwaghazi Mwachofi	-	Permanent Secretary, Treasury
Mr. John Munge	-	Commissioner General, Kenya Revenue Authority
Mr. Stanley Ngaine	-	Director/Fiscal and Monetary Affairs
Mr. S. Kirgotty	-	Registrar of Motor Vehicles
Mr. Francis Thurania	-	Deputy Commissioner, Customs/Excise
Mr. Kepher Tande	-	Commissioner/VAT
Mr. Maurice Ochieng	-	Senior Assistant Commissioner/KRA
Mr. Stephen Karuga	-	Deputy Commissioner/KRA
Mr. Andrew Okello	-	Assistant Director/Treasury
Mr. Philip Odeny	-	Senior Assistant Commissioner/KRA
Karen Nginda	-	Ag. Operations Manager
Mr. G. M. Kitenga	-	Ag. Deputy Commissioner of Customs/KRA

The Committee had called upon the Minister to discuss the following issues:

1. **The possibility of establishing a bicycle manufacturing plant in the country in order to cut down on importation costs.**

This issue was deliberated on at length. The Minister informed the Committee:

1. That the proposal in the Finance Bill 2001 is to zero rate the importation of bicycles and also make them duty free.

2. That there used to be bicycle manufacturing plants in the country in the 1980's prior to liberalization.
3. That upon liberalization, the market was opened up for imported knocked down kits and the local manufacturers were forced to close down due to stiff competition. It was cheaper to import since the differential tariffs had been abolished.

In response to a question by the Committee on the cost effectiveness of a manufacturing plant in the current liberalised economy, the Committee was informed that bicycle manufacture involves very simple and minimal transfer of technology and it would involve very little value addition. The government would be forced to raise duty for imported ones to protect those locally manufactured.

Responding to a question by the Committee on whether any research had been done to establish the level of demand for bicycles in this country, the Committee was informed that the demand was high but no specific research had been done.

2. **Duty on imported goods similar to those currently produced in Kenya**

The Minister informed the Committee that since the 1990's, the government had embarked on a programme to progressively reduce tariffs.

Whereas about ten years ago, the tariffs were above 100% the government, WTO and Comesa have been working on reducing the tariffs further to 25% by the year 2002/2003. Other trading partners such as Uganda are charging lower tariffs.

Responding to question by the Committee on what percentage of tariff Kenya would be able to compete effectively, the Committee was informed that it would depend on the competitiveness of various sectors of the economy. This would also be determined by forces such as the cost of power and the nature of the infrastructure.

In response to a question as to why Kenyan farmers cannot be protected from cheap food imported from South Africa whereas our farmers cannot access the South African Market, the Minister had the following to say:

- (a) That if Kenya makes the tariffs too prohibitive, those goods will still find their way into our market through transshipment to Uganda or other trading partners and then into Kenya.
- (b) That protectionism will not assist this country in terms of long term sustainability. The country needs to tackle the root causes of the problem such as power, infrastructure and commercial bank interest rates among others.
- (c) With WTO rules and globalization, no country can afford to use artificial means of doing business, as it will be left out of the global market. If Kenya for instance becomes protective, it would be the loser since it is the net exporter in East Africa and also Comesa.

Responding to a Committee question as to why the country cannot access cheap power from Southern Africa, the Minister said that the South African Power Pool is very cheap – about one cent per unit but it requires very high investment. He said that without capital, those issues cannot be addressed as adequately as would be expected. The government is however pursuing the possibility of accessing that power.

The Committee further expressed concern that the above problems are perennial and permanent solutions should be sought to make the country competitive with our trading partners.

3. **Penalty on failure to affix excise stamps on cigarette products – Kshs.1.5 million**

The Committee was informed that the judge has discretionary powers to impose a penalty of between Kshs.1 to 1.5 million depending on the mitigating factors.

Responding to a question as to what prompted such high penalties, the Committee was informed that foreign manufactured products were finding their way into the local market duty free through tax evasion. This posed very stiff competition for the local manufacturers who were paying all the required taxes. The introduction of different stamps for the locally produced and the imported products has created some level playing ground and also reduced infiltration of products from outside the country.

MIN. NO.639/2001

- ANY OTHER BUSINESS

1. The Committee resolved to schedule a meeting with the Minister for Finance and the Governor of Central Bank of Kenya to discuss the Donde Bill.
2. The Committee was informed that the scheduled meeting with the IMF team will be on Thursday, October 25, 2001 at 9.00 a.m.
3. The Committee resolved to schedule a meeting with the Ministry of Tourism and Information on the European Union assistance to market and revive the Tourism Industry.
4. The Committee was further informed that a Chinese Parliamentary delegation of the Finance and Economic Committee would like to meet the Committee during their visit to Kenya in mid November 2001.

The Committee agreed to take the delegation for a tour of tourist facilities at the Coast and Masai Mara. They would also meet with officials of Kenya Association of Manufacturers, Kenya Tourist Board and the Kenya Chamber of Commerce.

MIN. NO.640/2001

- ADJOURNMENT

And being no other business, the Chairman adjourned the sitting at 6.15 p.m.

Confirmed _____

Date _____

