

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**ACTS, 2022**

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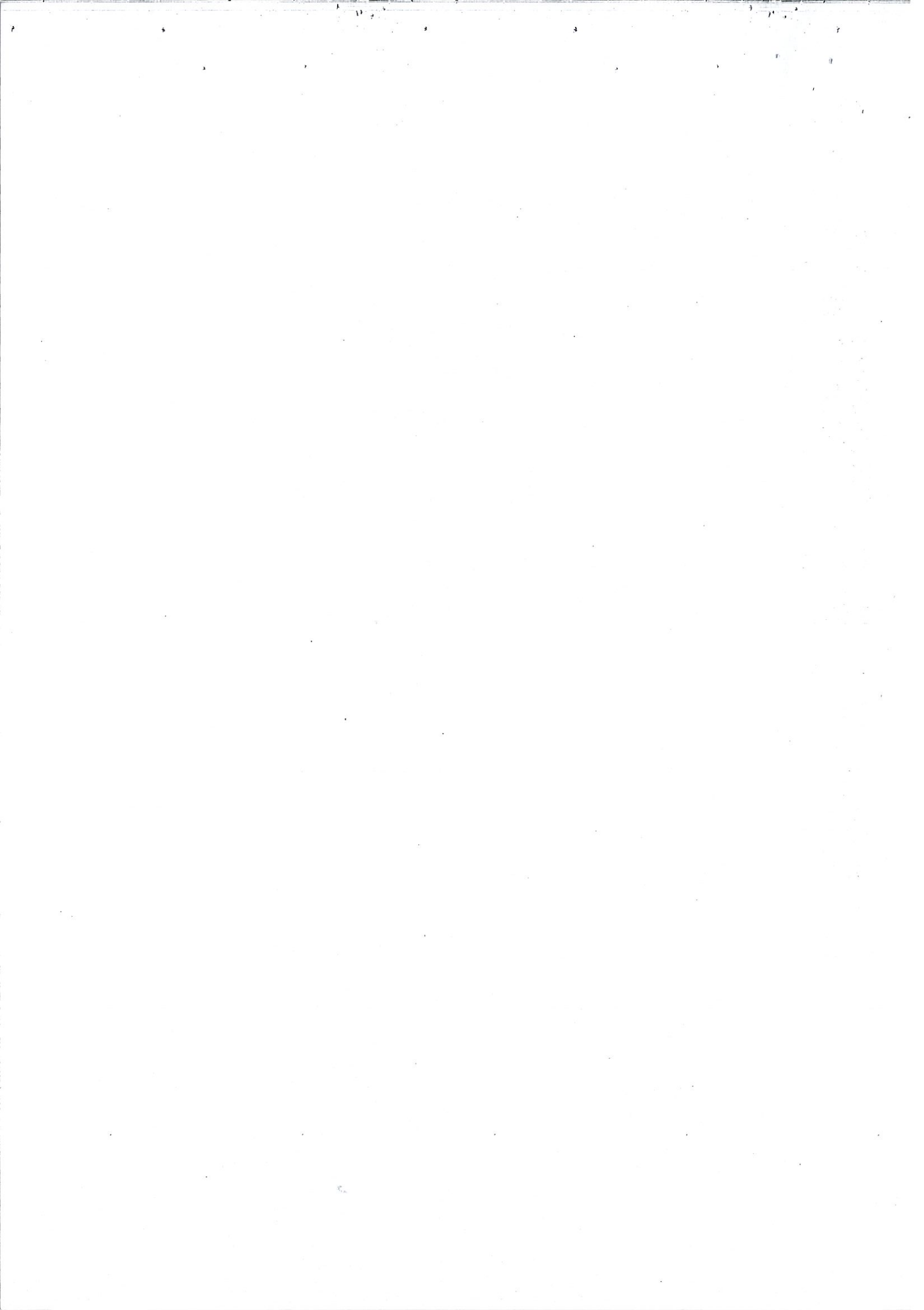
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**THE PUBLIC PROCUREMENT AND ASSET  
DISPOSAL (AMENDMENT) ACT, 2022**

**No. 32 of 2022**

*Date of Assent: 6th July, 2022*

*Date of Commencement: 26th July, 2022*

**AN ACT of Parliament to amend the Public Procurement and Asset Disposal Act and for connected purposes ENACTED by the Parliament of Kenya, as follows—**

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2022.

Short title.

2. Section 2 of the Public Procurement and Asset Disposal Act, in this Act referred to as the “principal Act”, is amended—

Amendment of section 2 of No. 33 of 2015.

(a) in the definition of “procurement professional”, by deleting the words “established under the Supplies Practitioners Management Act, 2007” appearing immediately after the word “Management” and substituting therefor the words “or any other procurement or supply chain professional body recognised in Kenya”;

(b) by inserting the following new definitions in their proper alphabetical sequence—

“complex and specialized contracts” means contracts that include procurement where the terms and conditions of an agreement are different from standard commercial terms and conditions, and includes contracts for infrastructural works performed under international agreements containing international terms and conditions;

“local contractor” means a person or a firm registered in Kenya under the Companies Act, 2015 or any other written law and whose operation is based in Kenya;

No. 17 of 2015.

3. Section 9 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (r) —

Amendment of section 9 of No. 33 of 2015.

“(ra) develop, promote and support the training and capacity development of persons involved in procurement and asset disposal;”

4. Section 26 of the principal Act is amended in subsection (6) by deleting the word “draft” appearing immediately after the words “publicize the” and substituting therefor the word “annual”.

Amendment of section 26 of No. 33 of 2015.

5. Section 39 of the principal Act is amended by deleting the word “Board” appearing immediately after the words “order of the” and substituting therefor the words “Director-General”.

Amendment of section 39 of No. 33 of 2015.

6. Section 40 of the principal Act is amended in subsection (2) by deleting the word “Board” appearing immediately after the words “attention of the” and substituting therefor the words “Director-General”.

Amendment of section 40 of No. 33 of 2015.

7. Section 41 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (i)—

Amendment of section 41 of No. 33 of 2015.

“(j) is determined by the Review Board to have filed a request that is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceeding or a performance of a contract”.

8. The principal Act is amended by inserting the following new section immediately after section 43—

Insertion of a new section 43A in No. 33 of 2015.

Authority to enter premises.

43A. (1) When conducting investigations, inspections, assessments and reviews relating to contracts, procurement and asset disposal proceedings, anyone authorized by the Authority may enter any premises of a procuring entity, at a reasonable time and inspect the premises to make any inquiries that may be necessary for the collection of information.

(2) Where an authorized person is refused entry or is prevented from entering premises, a magistrate may, on application by the Authority, issue a warrant authorizing the Police to enter the premises, using such force as may be reasonably necessary and to

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conduct the search and obtain the required information.

9. Section 44 of the principal Act is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of section 44 of No. 33 of 2015.

“(5) Where a public entity lacks capacity to comply with this Act, an accounting officer shall seek assistance from the National Treasury”.

10. Section 46 of the principal Act is amended—

Amendment of section 46 of No. 33 of 2015.

(a) in subsection (4) by deleting paragraph (c) and substituting therefor the following paragraph—

“(c) have as its secretary, the person in charge of the procurement function or an officer from the procurement function appointed, in writing, by the head of procurement function;”;

(b) by deleting subsection (6).

11. Section 48 of the principal Act is amended in subsection (2) by deleting the words “procuring unit” appearing immediately after the words “recommendation of the” and substituting therefor the words “head of procurement function”.

Amendment of section 48 of No. 33 of 2015.

12. Section 51 of the principal Act is amended in subsection (2) (b) by deleting the words “procurement and disposal unit” appearing immediately after the words “establish a” and substituting therefor the words “procurement function”.

Amendment of section 51 of No. 33 of 2015.

13. Section 53 of the principal Act is amended by inserting the following new subsections immediately after subsection (11)—

Amendment of section 53 of No. 33 of 2015.

(12) Upon submission of the procurement plans to the National Treasury pursuant to section 44(2)(c) of this Act, the accounting officer of a procuring entity shall publish and publicize its approved procurement plan as invitation to treat on its website.

(13) On receipt of the procurement plans submitted by the procuring entities, the National Treasury shall publish and publicize the procurement plans as invitation to treat on the state tender portal.

14. Section 54 of the principal Act is amended by inserting the following new subsections immediately after subsection (2)—

Amendment of section 54 of No. 33 of 2015.

“(2A) The head of the procurement function shall carry out market surveys to inform the placing of orders or decision making on a procurement by the relevant awarding authority.

(2B) For infrastructure projects the head of the procurement function in liaison with the head of the technical function in a procuring entity shall, prepare a market survey at the beginning of every financial year of the cost of goods and services and thereafter prepare a current cost handbook to be revised every six months for use in the decision making in the procurement process by the procuring entity.”

15. Section 67 of the principal Act is amended in subsection (4), by deleting the expression “section 67(2)(d)(iii)” appearing immediately after the words “referred to in” and substituting therefor the expression “section 68(2)(d)(iii)”.

Amendment of section 67 of No. 33 of 2015.

16. Section 69 of the principal Act is amended by inserting the words “and delegation of responsibility” immediately after the words “procurement approvals” appearing in the marginal note.

Amendment of section 69 of No. 33 of 2015.

17. Section 71 of the principal Act is amended in subsection (3) by deleting the word “tenderer” appearing immediately after the word “A” and substituting therefor the words “procuring entity”.

Amendment of section 71 of No. 33 of 2015.

18. Section 80 of the principal Act is amended in subsection (1) by deleting the expression “under section 82(3)” appearing immediately after the word “rejected”.

Amendment of section 80 of No. 33 of 2015.

19. The principal Act is amended by repealing section 82 of the Act and substituting therefor the following new section—

Repeal and replacement of section 82 of No. 33 of 2015.

Correction, revision, adjustment or amendment of tender.

**82.** (1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person or entity.

(2) For avoidance of doubt, the provisions of subsection (1) shall not apply to sections 103, 131 and 141 of this Act.

20. The principal Act is amended in section 86(1) by inserting the following proviso immediately after paragraph (d)—

Amendment of section 86 of No. 33 of 2015.

“Provided that the provisions of this subsection shall not apply to section 141 of this Act.”

21. Section 89 of the principal Act is amended in paragraph (b), by deleting the expression “118(2)” appearing immediately after the expression “sections 96(2) and” and substituting therefor the expression “118(1)”.

Amendment of section 89 of No. 33 of 2015.

22. Section 92 of the principal Act is amended by—

Amendment of section 92 of No. 33 of 2015.

(a) re-numbering the existing provision as subsection (1); and

(b) inserting the following new subsection immediately after subsection (1)—

“(2) The procedure for competitive negotiations set out in sections 131, 132 and 133 of this Act shall apply, with necessary modifications, to procurement of goods, works and non-consultancy services”.

23. Section 96 of the principal Act is amended—

Amendment of section 96 of No. 33 of 2015.

(a) in subsection (2), by inserting the following words immediately after the words “nationwide circulation”—

“or a notice in at least two free to air television stations and two radio stations of national reach”;

(b) in subsection (4), by inserting the following words immediately after the words “county-wide circulation”—

“or a notice in at least two free to air television stations and two radio stations of national reach”.

24. Section 98 of the principal Act is amended in subsection (1) by deleting the word “and” appearing immediately after the word “documents”.

Amendment of section 98 of No. 33 of 2015.

25. Section 114 of the principal Act is amended in subsection (6) by deleting the words “procurement

Amendment of section 114 of No. 33 of 2015.

management unit” appearing immediately after the word “A” and substituting therefor the words “procurement function”.

26. Section 117 of the principal Act is amended—

Amendment of section 117 of No. 33 of 2015.

- (a) in paragraph (a), by deleting the expression “section 74” appearing immediately after the words “subject to” and substituting therefor the expression “section 73”; and
- (b) by deleting the marginal note and substituting therefor the words “initiation of procurement”.

27. Section 119 of the principal Act is amended in subsection (1) by deleting the word “may” appearing immediately after the words “procuring entity” and substituting therefor the word “shall”.

Amendment of section 119 of No. 33 of 2015.

28. Section 121 of the principal Act is amended—

Amendment of section 121 of No. 33 of 2015.

- (a) in subsection (1), by deleting the words “accounting officer of a procuring entity” appearing immediately after the word “The” and substituting therefor the words “evaluation committee”;
- (b) by inserting the following new subsection immediately after subsection (4)—
  - “(5) Notwithstanding provisions of subsection (3), where a repeat process fails to yield the requisite numbers of qualified candidates, the procuring entity shall proceed with the subject procurement and make a report to the Authority”.

29. Section 124 of the principal Act is amended—

Amendment of section 124 of No. 33 of 2015.

- (a) by deleting subsection (14);
- (b) in subsection (15), by deleting the words “for approval” appearing immediately after the words “the Authority” and substituting therefor the words “within fourteen days”; and
- (c) by inserting the following new subsection immediately after subsection (15)—



“(16) The Authority shall issue written directions and guidelines governing the reporting requirements for use of alternative selection methods by the accounting officers of procuring entities”.

30. Section 138 of the principal Act is amended by deleting subsection (5) and substituting therefor the following subsection—

Amendment of  
section 138  
of No. 33 of  
2015.

“(5) This section shall not apply to procurement contracts awarded by national security organs through classified procurement methods and procedures provided for under Part VIII”.

31. Section 139 of the principal Act is amended by—

Amendment of  
section 139  
of No. 33 of  
2015.

(a) deleting subsection (2) and substituting therefor the following new subsection—

“(2) An accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed Contract Agreement, may approve the request for—

- (a) use of prime costs;
- (b) use of contingencies;
- (c) reimbursable costs; and
- (d) use of provisional sums.”

(b) inserting the following new subsection immediately after subsection (2)—

“(2A) Despite subsection (2), an accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed contract agreement, may approve the request for the extension of the contract period, which request shall be accompanied by a letter from the tenderer making justifications for such extension.”

(c) deleting subsection (4) and substituting therefor the following new subsection—

“(4) For the purposes of this section, any variation of a contract shall only be considered if the following are satisfied—

- (a) the price variation from the original price is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics;
  - (b) the quantity variation for goods does not exceed fifteen per cent of the original contract quantity;
  - (c) the price or quantity variation is to be executed within the period of the contract;
  - (d) the cumulative value of all contract variations for goods do not result in an increment of the total contract price by more than twenty five per cent of the original contract price; and
  - (e) the cumulative value of professional services does not result in an increment of the total contract price by more than twenty-five per cent of the original contract price.”
- (d) inserting the following new subsection immediately after subsection (6)—
- “(7) The method for computing price variation under this section shall be prescribed in regulations.”

**32. The principal Act is amended by repealing section 141 and substituting therefor the following new section—**

Repeal and replacement of section 141 of No. 33 of 2015.

Framework contracting and multiple awards.

**141.** (1) Subject to any prescribed restrictions an accounting officer of a procuring entity may apply framework contracting arrangements by making awards of indefinite-delivery contracts and multiple awards of indefinite or definite quantity contracts for procurements under this Act.

(2) For the purposes of subsection (1), “multiple award” means award of separate (partial) contracts to two or more bidders of the same item.

**33. Section 167 of the principal Act is amended—**

Amendment of section 167 of No. 33 of 2015.

- (a) by inserting the following proviso immediately after subsection (2) —

“Provided that this shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups”.

- (b) in subsection (4) (b), by deleting the expression “section 62” appearing immediately after the words “in accordance with” and substituting therefor the expression “section 63”.

34. Section 169 of the principal Act is amended by—

Amendment of section 169 of No. 33 of 2015.

- (a) re-numbering the existing provisions as subsection (1); and  
 (b) inserting the following new subsection immediately after subsection (1)—

“(2) Notwithstanding the provisions of subsection (1), filing fees for review by candidates under reserved procurements for women, youth, persons with disabilities and other disadvantaged groups may be waived by the secretary or where required fees shall be as prescribed”.

35. Section 172 of the principal Act is amended by inserting the words “and be debarred by the Authority” immediately after the words “deposit paid”.

Amendment of section 172 of No. 33 of 2015.

36. Section 176 of the principal Act is amended—

Amendment of section 176 of No. 33 of 2015.

- (a) in subsection (1)(e), by deleting the expression “section 78” appearing immediately after the words “opened under” and substituting therefor the expression “section 77(6)”;
- (b) in subsection (1)(f), by deleting the expression “section 66” appearing immediately after the word “under” and substituting therefor the expression “section 67”; and
- (c) in subsection (1)(h), by deleting the expression “section 60” appearing immediately after the words “contrary to” and substituting therefor the expression “section 54”.

37. The First Schedule is amended by deleting paragraph 3.

Amendment of the First Schedule of No. 33 of 2015.

38. The Second Schedule is amended by deleting paragraph 3.

Amendment of the Second Schedule of No. 33 of 2015.

39. The Third Schedule is amended—

Amendment of the Third Schedule of No. 33 of 2015.

- (a) in paragraph 2, by deleting the expression “section 66” and substituting therefor the expression “section 67”;
- (b) in paragraph 3(1), by deleting the expression “section 67” and substituting therefor the expression “section 68(2)”;
- (c) in paragraph 3(2), by deleting the expression “section 51(2)” and substituting therefor the expression “section 68(2)”; and
- (d) in paragraph 4, by deleting the expression “section 67” and substituting therefor the expression “section 138”.