

Kenya: National Assembly Gazettes the Law of Contract (Amendment) Bill, 2025

Introduction

Kenya's Parliament has received the Law of Contract (Amendment) Bill, 2025 Sponsored by Wajir East MP Aden Daud Mohamed. Dated 10th April 2025.

Key Areas

- The Bill seeks to amend the existing Law of Contract Act, which has long relied on English common law principles emphasizing freedom of contract — an approach that is alleged to have allowed unfair and unconscionable terms to persist in agreements across sectors including finance, real estate, retail, and services.
- The Bill introduces several key protections including a prohibition against contractual terms to exclude liability for death or negligence, and any attempt to limit liability for loss or damage from negligence which must now meet a "requirement of reasonableness."
- The Bill codifies “negligence”, which had long been recognised under common law, into statute, thereby effectively creating a statutory cause of action for contractual negligence. Typically, aggrieved parties in commercial contracts seeking remedy for loss arising from a party’s negligence would institute a claim for breach of contract under which, such party would be required to demonstrate that the party was negligent thus occasioning loss. However, establishing negligence under a contract has generally required satisfaction of the elements as developed and determined by the courts. By codifying negligence under the Act, the Bill expressly sets out the elements constituting contractual negligence, thereby providing greater clarity and certainty in respect of this cause of action.
- The Bill also provides that in supply contracts for goods intended for consumer use (business-to-consumer agreements), suppliers are barred from excluding liability for breach, delivering substantially different performance than expected, or rendering no performance at all. Sellers of defective goods for consumer use cannot escape liability, and anything in writing that promises to remedy defects qualifies as a guarantee.
- The protective provisions of the Bill also apply to sale of goods and hire-purchase agreements. While consumers enjoy absolute protection under these arrangements, parties contracting in a non-consumer capacity retain some degree of flexibility to exclude or restrict liability, provided the relevant contractual terms meet the established reasonableness standard.

Impact and Conclusion

If passed, the Bill would shift Kenya's contracting landscape by setting new limits within which the parties' freedom to contract would be confined and therefore empowering courts to invalidate grossly unfair contract terms. It would also require that parties closely review the limitation of liability and indemnification clauses in their contracts to ensure compliance with the prohibitions on exclusion of liability and the bases for claims for indemnification.

While this will interfere with the long-standing freedom of contract for parties, it will ensure stronger consumer protection. There will likely be increased litigation on commercial contracts, and we will be looking to see how the courts will interpret and apply the requirement of reasonableness in commercial contracts.

The bill is available ([HERE](#)).

In case of any queries, you can contact the team below.



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