



**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN
DEVELOPMENT**

**REGULATORY IMPACT ASSESSMENT (RIA)
STATEMENT FOR THE INSTITUTE OF DESIGNERS OF
KENYA BILL, 2023**

OCTOBER 2023

This Regulatory Impact Assessment (RIA) statement has been prepared by The Ministry of Lands, Public Works, Housing and Urban Development pursuant to Sections 6 and 7 of the Statutory Instruments Act (No. 25 of 2022)

EXECUTIVE SUMMARY

The Ministry of Lands, Public Works, Housing and Urban Development is pleased to present the Regulatory Impact Assessment statement for the Institute of Designers of Kenya Bill, 2023. This Regulatory Impact Assessment (RIA) is a policy tool prepared pursuant to Sections 6 & 7 of the Statutory Instruments Act (No. 23 of 2013) and its purpose is to examine and measure the likely benefits, costs and effects of the proposed regulatory bill. It examines the impact of the establishment of the Institute whose main objective is to provide for development, promotion, protection and the utilization of creative designs, to encourage creation of designs and facilitate the development of design practice in Kenya. This RIA is divided into 10 chapters.

- **Chapter 1** outlines the Regulation Making Authority, legal mandate of the Ministry and the statutory requirements for RIA.
- **Chapter 2** of the RIA captures a policy background and context, statement of the objectives of the bill.
- **Chapter 3** of the RIA provides a policy objectives and its purpose.
- **Chapter 4** states the policy and legal background, and local, regional and international contexts problems to be solved, giving evidence of its nature and magnitude, and explaining why it has arisen.
- **Chapter 5** takes us into the evaluation of the problem and strategies and plans adopted by the country.
- **Chapter 6** discusses the legal and policy framework for the proposed bill, constitutional basis and the statutory framework supporting the development of the Bill
- **Chapter 7** outlines the consultative process adopted to develop the RIA. It states the initial consultative process and other engagements with experts, partner agencies, stakeholders and general public.
- **Chapter 8** of the RIA is a cost benefit analysis that weighs the costs of implementing the proposed bill against the benefits of what the proposed regulations are anticipated to bring.
- **Chapter 9** provides for the regulatory and non-regulatory options available and the appropriateness of each option. It also justifies why the regulatory option is appropriate.
- **Chapter 10** of the RIA is the conclusion and recommendations on the option to adopt and also charts compliance and implementation of the proposed Bill.

1.0. CHAPTER ONE: INTRODUCTION

1.1. Regulatory-Making Authority and the Legal Mandate

In Kenya, the design industry is regulated by various authorities and governed by the Ministry of Lands, Public Works, Housing and Urban Development. The ministry plays a crucial role in overseeing the regulation and development of the design profession in the country. The legal mandate of the Ministry in relation to the design profession regulation encompasses several key aspects. The Ministry is responsible for formulating policies and regulations that govern the built environment as well as Design sector.

To realise this role, the Ministry collaborates with professional bodies and associations in the design industry to develop and enforce regulations. The Association of Designers of Kenya (ADKE) and Interior Designers association of Kenya (IDAK) are professional bodies that work closely with the Ministry to promote excellence in Designers and advocate for the interests of the professionals. These Associations provides guidance on professional ethics, continuing education, and best practices in design.

1.2. Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority (RMA) shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

SIA further sets out certain key elements that must be contained in the RIA namely:

- a) A statement of the objectives of the proposed legislation and the reasons for them; Regulatory Impact Assessment (RIA) Statement for the Institute of Designers of Kenya Bill, 2023
- b) A statement explaining the effect of the proposed legislation including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument
- c) A statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- d) An assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- e) The reasons why the other means are not appropriate
- f) Any other matters specified by the guidelines;
- g) A copy of the proposed statutory rule.

Section 5 of SIA requires a regulatory making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.3. What is a Regulatory Impact Assessment?

Regulatory Impact Analysis (RIA) is a mechanism that has been developed to improve the policy-making process in terms of the consideration of options. Its purpose is to help point to the best performing policy lever to achieve the stated policy goal(s) whilst considering the costs, benefits, and impacts of taking action to regulate. It is most important to note that by its very nature, the RIA process evolves and adapts in line with the state of development of the policy-making process. As a plan is to the planning process, a RIA document is a snapshot in time of that ongoing process and must be understood accordingly.

RIA process is usually sequentially supplemented by Business Case Analysis which allows for a deeper dive into key elements of a major project (like costs, staffing and other resources factors) once the most feasible options have been identified. Further, given its origins in economic competitiveness scenarios, the RIA process tends to be at its best as a quantitative analysis tool. However, public policy projects also tend to have a strong qualitative side including social and cultural aspects which must necessarily be considered in decision-making along with RIA findings. While the RIA process and findings will guide the development of the policy intervention, it does not seek to provide an implementation plan. Further business case development for planned investment and implementation planning is required in compliance with the Public Spending Code, and these will be prepared in the next phase of the policy development process, as appropriate.

The purpose of this Regulatory Impact Assessment (RIA) report is to evaluate the potential impacts and consequences of the proposed bill. This report will assess the potential economic, social, and environmental impacts of the proposed legislation.

CHAPTER TWO: AN OVERVIEW OF THE PROPOSED INSTITUTE OF DESIGNERS OF KENYA, BILL 2023

2.1. Overview of the Design industry in Kenya

The design industry in Kenya has been experiencing significant growth and development in recent years. The growth can be attributed to several factors driven by a combination of local and international talent, innovative technologies, and a thriving entrepreneurial spirit. One of the key strengths of the design industry in Kenya is its focus on innovation and creativity. Many designers in the country are using cutting-edge technologies and techniques to create unique and impactful designs that stand out in the global market.

Despite the many strengths of the design industry in Kenya, there are also some challenges that the industry faces. There is currently no specific legislation or regulatory body governing the design profession in Kenya. This lack of regulation has led to inconsistencies in professional standards, limited consumer protection and challenges in ensuring quality control within the industry. The proposed bill seeks to address these issues by establishing a regulatory framework that will provide guidelines for professional practice, accreditation requirements and disciplinary procedures for designers in Kenya. The bill also aims to enhance collaboration between designers and other stakeholders, such as Government Agencies, businesses and educational institutions. The country's creative design sector has become a key driver of economic growth and innovation. Kenya's design industry encompasses various fields such as interior design, graphic design, and product design.

2.2. Policy Background and Context

The Institute of Designers of Kenya, bill 2023 aims to establish a regulatory framework for the design profession in Kenya, with the objective of promoting professionalism, ethical conduct, and quality standards within the industry. The bill seeks to further improve the quality of creative design services, protect consumers from unscrupulous designers and promote the development of the creative design industry. This regulatory impact assessment report evaluates the potential impact of the bill on the industry, consumers, and the wider economy.

To overcome the industry challenges, the design practitioners in Kenya will need to continue to innovate and adapt to changing trends and technologies. This may involve investing in new tools and technologies, developing new business models and revenue streams, and working to raise awareness and understanding of the value of design among clients and stakeholders.

2.3. Proposed Policy Context within the Bottom up Economic Transformation Agenda

The Bottom-up Economic Transformation Agenda aims to promote inclusive growth and development by focusing on empowering the grassroots population, particularly small-scale entrepreneurs and informal sector workers. Within this context, the Institute of Designers of Kenya Bill, 2023 can play a significant role in fostering innovation, job creation and economic diversification.

Creative designers possess artistic skills and innovative thinking to develop unique and aesthetically appealing products or services. They play a crucial role in various sectors of the economy. By incorporating creativity and design thinking into their work, they contribute to enhancing the quality and competitiveness of products and services.

To harness the potential of creative designers within the bottom-up economic transformation agenda, the following policy measures have been considered:

- a) The Government intends to invest in capacity building programs to enhance the skills and knowledge of creative designers. This will include providing training in design thinking, entrepreneurship, marketing and business management. By equipping designers with the necessary skills, they can effectively contribute to the growth of local industries and create sustainable businesses.
- b) Protecting intellectual property rights is crucial for fostering creativity and innovation among designers. The government shall, within the proposed frameworks in the bill, strengthen intellectual property laws and enforcement mechanisms to safeguard the rights of creative designers.
- c) Facilitating collaboration and networking opportunities among creative designers, entrepreneurs, manufacturers, and other stakeholders is essential for knowledge sharing and market access. The government shall support design exhibitions, trade fairs, and networking events where designers can showcase their work, connect with potential clients or investors, and learn from each other's experiences.
- d) The bill provides an opportunity for the Government incorporate a policy that promotes the inclusion of locally designed products in public procurement processes, moreso works of art in public spaces. This will create a market for creative designers' products and services while also supporting local industries.

CHAPTER THREE: THE PURPOSE, AIMS AND OBJECT OF PROPOSED BILL

3.1. General Objective

The primary aim of the bill is to recognize and regulate the design profession in Kenya by establishing the Institute of Designers of Kenya as the official body responsible for overseeing the professional conduct, standards, and development of designers in various design fields.

3.2. Specific objectives

The objectives of the bill are to:

- i. Improve the quality of creative design services by establishing a registration system for creative designers
- ii. Protect consumers from unscrupulous designers by ensuring that only qualified and competent designers are allowed to practice.
- iii. Promote the development of the creative design industry by providing a framework for the continuous professional development of designers.
- iv. Enhance the reputation of the creative design industry by establishing a register of qualified designers.

3.3. Specific Purposes

- i) The bill aims to promote Continuous Professional Development among designers in Kenya. It seeks to provide opportunities for designers to enhance their skills, knowledge, and competencies through training programs, workshops, seminars, conferences, and other educational initiatives.
- ii) The bill aims to establish a code of ethics for designers in Kenya. It seeks to promote ethical behavior and professional integrity among designers by setting guidelines for their conduct towards clients, colleagues, society, and the environment.
- iii) The bill aims to promote and recognize design excellence in Kenya by encouraging innovation, creativity and quality in design practice by organizing design competitions, exhibitions, awards, and other events that showcase outstanding work.
- iv) The bill recognizes the importance of collaboration between designers and other industries. It aims to facilitate partnerships to harness the potential of design for economic growth, social development, and environmental sustainability.

CHAPTER FOUR: BACKGROUND AND CONTEXT

4.1. Policy and Legal Background

The Designers Registration Bill in Kenya is a policy and legal initiative aimed at regulating the practice of design and protecting the rights of designers in the country. The bill seeks to establish a registration system for designers, which would provide legal recognition and protection for their intellectual property rights.

4.2. Policy Background

The policy background of the Designers Registration Bill can be traced back to the need for intellectual property protection in the creative industry. Designers play a crucial role in shaping the aesthetic and functional aspects of various products and services. However, their work often goes unrecognized and unprotected, leading to issues such as plagiarism, copyright infringement, and unfair competition. Recognizing the importance of protecting designers' rights, the Kenyan government has taken steps to address these issues through policy interventions. The Designers Registration Bill is one such initiative that aims to provide a legal framework for the registration and protection of designers' intellectual property rights.

4.3. Key Provisions of the Designers Registration Bill:

The Designers Registration Bill contains several key provisions that are aimed at achieving its objectives. Some of the notable provisions include:

- a) **Establishment of a Designers Registration Board:** The bill proposes the establishment of a Designers Registration Board, which would be responsible for overseeing the registration process and enforcing compliance with the law.
- b) **Mandatory Registration:** The bill makes it mandatory for designers to register their designs with the Designers Registration Board. This registration would provide legal recognition and protection for their intellectual property rights.
- c) **Promotion of intellectual design rights:** The bill seeks to promote designers' intellectual property rights by granting them exclusive rights over their designs. This includes the right to reproduce, distribute, display, and license their designs, as well as the right to take legal action against infringement.
- d) **Enforcement Mechanisms:** The bill outlines mechanisms for enforcing compliance with the law, including penalties for non-compliance and provisions for dispute resolution.

4.2. Domestic Context

The Designers Registration Bill has the potential to boost the local design industry in Kenya by providing a legal framework for the protection of designers' rights. This could lead to increased investment in the industry and the creation of new design businesses.

The Industrial Property Act 2001 in Kenya governs intellectual property rights related to inventions (patents), trademarks (including service marks), industrial designs (including ornamental or aesthetic aspects of an article), utility models (smaller inventions with practical utility), and trade secrets. The Copyright Act, Cap 130 provides for protection of original works of authorship, including literary works, artistic works (including designs), musical works, audiovisual works, sound recordings, and broadcasts.

4.3. Regional context

The Bill is influenced by similar initiatives in other countries. Many countries have established regulatory frameworks for design professionals to ensure public safety, protect clients, and maintain professional standards. Examples include the Designers Act, 1949 in United Kingdom, Philippine Interior Design Act of 2012, The Designs Act, 2000 in the Republic of India, Designs Act, 2003 in Australia, Interior Designers Act, 2006 in Ontario Designs Act 1953 in New Zealand, Interior Designer Registration Act in Pennsylvania among others. These international examples provide valuable insights into the potential benefits and challenges of regulating design professionals. They highlight the importance of striking a balance between ensuring competence and fostering innovation and diversity within the design industry. Lessons learned from these experiences can inform the development and implementation of the Designers Act in Kenya.

4.4 International Context

The Designers Registration Bill in Kenya has garnered significant attention and debate within the country, but it is also important to consider the international context and how it relates to the bill. Kenya is a signatory to several international treaties that recognize the rights of designers, including the Paris Convention for the Protection of Industrial Property and the World Intellectual Property Organization (WIPO) Copyright Treaty. These treaties provide a framework for the protection of designers' rights and the enforcement of those rights across borders. The global design industry is becoming increasingly important, with the Global market for design services projected to reach \$1.3 trillion by 2025. As the industry grows, so does the need for effective protection of designers' rights.

CHAPTER FIVE: EVALUATION OF THE PROBLEM

Designers in Kenya face challenges related to recognition and appreciation for their work. The field of design is not always seen as a prestigious or respected profession in Kenyan society. This lack of recognition can lead to lower salaries, limited career advancement opportunities, and a general undervaluing of the contributions made by designers. Additionally, there is a lack of platforms and events that showcase and celebrate the work of Kenyan designers, further limiting their visibility and recognition. This has results to;

- a) Decrease in motivation and job satisfaction among designers. When their efforts go unnoticed or undervalued, designers may feel demotivated and unappreciated.
- b) Impact the financial well-being of designers. Designers often rely on their reputation and recognition to attract clients and secure projects.
- c) Designers' work can perpetuate a cycle of undervaluing creativity and design as a whole.

One of the primary challenges for designers in Kenya is the lack of access to quality education and training opportunities. Many aspiring designers struggle to find institutions that offer comprehensive design programs. The limited availability of design courses often leads to a lack of foundational knowledge and skills among designers. Additionally, the curriculum in some design schools may not be up-to-date with the latest industry trends and technologies, further hindering the growth and competitiveness of designers. This has results to; Limited career advancement opportunities; insufficient skills and knowledge; Limited networking opportunities, creativity and innovation.

Designers in Kenya often face challenges related to limited resources. Access to modern design tools, software, and equipment can be expensive and difficult to obtain. This lack of resources hampers the ability of designers to experiment, innovate, and produce high-quality work. Limited access to libraries, research materials, and design references also poses a challenge for designers seeking inspiration and staying updated with global design trends.

Another significant challenge for designers in Kenya is the limited market demand for their services. The design industry in Kenya is relatively small compared to more developed countries. This results in a smaller client base and fewer job opportunities for designers. Many businesses in Kenya do not fully understand the value of professional design services or are hesitant to invest in them.

CHAPTER SIX: LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED REGULATIONS

6.1 Constitutional Basis

The Constitution provides a framework for the development and enactment of laws that promote and protect various aspects of intellectual property rights, including design rights.

Article 40 of the Constitution guarantees the right to own property, which includes intellectual property rights. Design rights are a form of intellectual property that protects the aesthetic aspects of a product or creation. By recognizing the right to own property, the Constitution implicitly recognizes the need to protect design rights through legislation such as the Designers Registration Bill.

Article 11 of the Constitution establishes the principle of national values and principles of governance. One of these values is creativity and innovation. The Designers Registration Bill can be seen as a means to promote creativity and innovation by providing a legal framework for designers to register their designs and protect them from unauthorized use or infringement.

Article 69 of the Constitution empowers Parliament to enact legislation on matters related to intellectual property rights. This includes design rights, which fall under the broader category of industrial property rights. The Designers Registration Bill can be seen as an exercise of this legislative power granted to Parliament by the Constitution.

Article 118 of the Constitution provides for public participation in legislative processes. This means that any bill, including the Designers Registration Bill, should undergo a process of public consultation and engagement before it is enacted into law. Public participation ensures that the views and concerns of stakeholders, including designers and other interested parties, are taken into account during the development and drafting of the bill.

6.2. National Policy Framework.

The legal background of the Designers Registration Bill lies within the existing intellectual property laws in Kenya. Intellectual property refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. In Kenya, intellectual property rights are protected under The Copyright Act, Cap130 and the Industrial Property Act, 2001.

6.3. Other Statutory Framework

The statutory framework supporting the development of the Designers Registration Bill in Kenya is based on a combination of local and international laws and regulations, including the the Copyright Act Cap130, the Industrial Designs Act,2001, the 1883 Paris Convention and WIPO treaties(1967,1970 &1979). These conventions, treaties, national laws and attendant regulations provide a comprehensive legal framework for the recognition and protection of designers' rights in Kenya, and will help to promote the development of the design industry in the country.

CHAPTER SEVEN: PUBLIC CONSULTATIONS

7.1. Legal requirements relating to consultation and public participation.

The process of stakeholder consultations in preparation of the proposed Bill is in line with Article 10, of the Constitution of Kenya 2010, and Section 5 of the Statutory Instruments, Act 2013.

7.2. Initial Development & Consultation Process

The initial development and consultation processes supporting the development of the Bill involved various stakeholders and steps to ensure a comprehensive and inclusive approach. The aim was to create a legal framework that would regulate the practice of design and protect the interests of designers in the country.

- i. The first step in the development process was to engage with relevant stakeholders, including professional design associations, industry experts, other government agencies, and academia. These stakeholders were consulted to gather their insights, experiences, and recommendations on the need for a Creative Designer's Registration Bill and its potential impact on the design industry in Kenya.
- ii. Extensive research and analysis were conducted to understand the current state of the design industry in Kenya, including its challenges, opportunities, and best practices from other countries. This research helped identify gaps in the existing regulatory framework and informed the development of provisions that would address these gaps effectively.
- iii. Based on the stakeholder consultations and research findings, a team of legal experts, policymakers, and design professionals collaborated to draft the Designers Registration Bill. This process involved multiple iterations to ensure that all relevant aspects of design practice were adequately addressed in the proposed legislation.
- iv. Once a draft of the bill was prepared, it was made available for public consultation. This allowed individuals and organizations from various sectors to provide their feedback, suggestions, and concerns regarding the proposed legislation. Public consultations played a crucial role in refining the bill and ensuring that it reflected the diverse perspectives of stakeholders.
- v. Following public consultations, the draft bill underwent a thorough review by legal experts and policymakers. Their expertise helped identify any legal or technical issues that needed to be addressed before finalizing the bill. The review process also involved comparing the draft bill with similar legislation from other jurisdictions to ensure alignment with international best practices.

CHAPTER 8: COST-BENEFIT ANALYSIS

Cost-benefit analysis (CBA) is a tool used by regulatory decision makers, in our case, the Regulation Making Authority (RMA) to identify the costs and benefits, in financial terms, of a proposed regulation to society as a whole. In preparing the CBA, the RMA makes an attempt to assign a monetary value to all the predicted costs and benefits of a proposed regulation. These include not only the direct costs and benefits, but any tangential effects a proposed regulation may impose on society. In evaluating the effects on society, CBA includes costs and benefits to industry, Government, individual citizens, communities, the environment, and the economy at large. Cost-benefit analysis helps alleviate democratic concerns by making the development of statutory instruments more transparent, accessible and open to both the public, stakeholders, experts and Parliament, who can exercise influence over the RMA. Cost benefit analysis requires an RMA to attempt to quantify its reasoning process-revealing which aspects of a problem the RMA has taken into account. It allows the public, stakeholders, experts and Parliament to understand and challenge the RMA's calculations or even its choices about which factors count in the decision-making process.

Section 7(1) of SIA provides that a regulatory impact statement shall include an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives in clear and precise language.

8.1 Costs and Benefits of the proposed bill,

The development of the bill can bring about numerous benefits to the design industry and the country as a whole. This bill would establish a formal process for registering and recognizing designers, ensuring that they meet certain standards and qualifications. Here are some of the accruing benefits of developing the proposed bill:

- i. The registration bill would help elevate the level of professionalism within the design industry in Kenya. By establishing minimum standards for education, experience and ethical conduct, it would ensure that qualified individuals can practice as interior designers. This would enhance the quality of design services offered in Kenya, leading to better outcomes for clients and improved reputation for the industry.
- ii. A well-regulated design industry can contribute significantly to economic growth and job creation. By formalizing the profession through a registration bill, it would attract investment and encourage entrepreneurship in the design sector. This, in turn, would lead to the establishment of more design firms, studios, and agencies, creating employment opportunities for designers and related professionals. Additionally, a thriving design industry can also stimulate other sectors such as manufacturing, advertising, and marketing, further contributing to economic development

- iii. The designers registration bill would provide official recognition to designers as professionals in their field. This recognition can lead to increased collaboration between designers and other stakeholders such as architects, engineers, developers, and government agencies. By working together on projects, designers can contribute their expertise in areas such as urban planning, sustainable design, and social innovation, leading to more holistic and impactful solutions.
- iv. The registration bill would also benefit consumers by ensuring that they have access to qualified and competent designers. By requiring designers to meet certain standards and adhere to a code of ethics, the bill would protect consumers from unscrupulous practitioners who may provide substandard services or engage in unethical practices. This would enhance consumer confidence in the design industry and promote trust between designers and their clients.

8.2. Costs

The Cost of Registration Analysis of the Bill involves an examination of the financial implications associated with registering as a member of the Institute.

8.2.1. Registration Fee

One of the primary costs associated with joining the Institute is the registration fee. The Bill outlines the registration fee structure, which may vary depending on different membership categories. The exact fees are subject to change and should be referred to the official documentation for accurate information. It is important to note that these fees are typically non-refundable.

8.2.2. Annual Membership Fee

In addition to the initial registration fee, members are required to pay an annual membership fee. This fee contributes to the ongoing operations and activities of the Institute, including administrative costs, professional development programs, networking events and advocacy efforts. The specific amount of the annual membership fee may vary based on membership category and can be subject to periodic review.

8.2.3. Continuing Professional Development (CPD) Costs:

The bill emphasizes the importance of continuous professional development for members of the Institute. CPD refers to activities that enhance professional knowledge, skills, and competencies. These activities may include attending workshops, conferences, seminars or pursuing further education in design-related fields. While CPD costs are not explicitly mentioned in the bill, it is essential for members to consider these expenses when evaluating the overall cost of registration.

8.2.4. Additional Costs

Apart from the aforementioned fees, there may be additional costs associated with being a registered member of Institute. These can include charges for participating in specialized training programs or workshops organized by the Institute, fees for accessing exclusive resources or publications, and expenses related to attending industry-related events or exhibitions.

8.3. Benefits of Registration

While the cost of registration is an important consideration, it is equally essential to evaluate the benefits that come with being a member of the Institute. Some potential advantages include professional recognition, networking opportunities and access to resources and support. By becoming a registered member, designers can enhance their professional image, expand their network, stay updated with industry trends, access valuable resources, and receive guidance and support from the institute and the ability to contribute to shaping the design profession in Kenya through advocacy efforts.

8.4. Assessment of the Impact

8.4.1. Economic Impact.

The design industry in Kenya contributes to the country's economic development by generating revenue through exports and domestic sales. Kenyan designers have gained recognition both locally and internationally, leading to increased demand for their products and services. This has resulted in the growth of small and medium-sized enterprises (SMEs) within the industry, creating employment opportunities and contributing to the country's GDP. The export of Kenyan-designed products has also boosted foreign exchange earnings. The industry has capitalized on Kenya's rich cultural heritage and diverse artistic traditions to create unique designs that appeal to both local and international markets.

The design industry is a significant source of employment in Kenya. It provides opportunities for designers, artisans, craftsmen, and other professionals involved in the creative process. Many young people are pursuing careers in design-related fields due to the growing demand for their skills. Graphic designers are employed by advertising agencies, media houses, and marketing firms to create visual content for various platforms. Fashion designers work in clothing manufacturing companies or establish their own fashion labels. Interior designers are hired by individuals or businesses to create aesthetically pleasing and functional spaces. Product designers collaborate with manufacturers to develop innovative consumer goods.

The implementation of the bill is expected to have several economic impacts on the design industry in Kenya. First, it will create a more level playing field for designers by setting minimum standards for professional practice. This will help eliminate unqualified practitioners and enhance the reputation of the industry as a whole. Secondly, the bill will promote innovation and creativity within the design sector by encouraging designers to adhere to best practices and quality standards. This will result in improved product and service offerings, leading to increased competitiveness both domestically and internationally. Furthermore, the establishment of a regulatory body under the proposed bill will provide opportunities for capacity building and skills development within the design profession. This will contribute to job creation and economic growth by attracting investments and fostering entrepreneurship in the industry.

8.4.2. Social Impact

The design industry plays a crucial role in preserving Kenya's rich cultural heritage. Traditional crafts such as beadwork, weaving, carving, and pottery are integrated into contemporary designs, ensuring their continuity and relevance in modern society. By incorporating traditional elements into their creations, designers promote cultural appreciation and identity. Designers also work closely with local communities, collaborating with artisans and craftsmen to develop products that showcase their traditional skills. This not only preserves cultural practices but also provides a sustainable source of income for these communities.

The design industry fosters innovation and creativity in Kenya. Designers are constantly pushing boundaries, experimenting with new materials, techniques, and technologies to create unique and cutting-edge designs. They draw inspiration from their surroundings, culture, and global trends to develop innovative solutions to societal challenges. Design thinking is increasingly being recognized as a valuable problem-solving approach in various sectors such as healthcare, education, and social entrepreneurship. Designers collaborate with professionals from different fields to develop user-centered solutions that address specific needs and improve the quality of life for individuals and communities.

The bill is expected to have significant social impacts by promoting professionalism, ethical conduct and consumer protection within the design industry in Kenya. The establishment of a regulatory framework will ensure that designers adhere to a code of ethics, which will enhance trust and confidence among clients and the general public. Moreover, the bill will provide a platform for collaboration and knowledge sharing among designers, educational institutions, and other stakeholders. This will facilitate the exchange of ideas, skills, and best practices

The Bill will contribute to the recognition and appreciation of design as a valuable profession in society. By setting standards for professional practice and promoting quality design outcomes, the bill will help elevate the status of designers and their

contributions to various sectors such as building construction, fashion, product design and graphic design. The establishment of a register of qualified designers will enhance the reputation of the creative design industry, which will attract more clients and investment.

8.4.3. Environmental Impact

The bill requires the establishment of a Design Institute, which will be responsible for the registration of designers, the promotion of the industry, and the development of standards and guidelines for the practice of design. This will likely result in increased energy consumption, as the Institute will require lighting, heating and cooling systems to operate effectively. Additionally, the Institute may require specialized equipment and technology, such as computer systems and software, which will also consume energy.

The bill requires the Institute to maintain a register of designers, which will likely result in the use of paper for documentation and record-keeping purposes. This could lead to paper waste and contribute to deforestation and habitat destruction. The bill also requires the Institute to conduct research and development activities, which may involve travel and the use of transportation, leading to a higher carbon footprint. Additionally, the Institute may require the use of energy-intensive equipment and technology, such as computers and software, which will also contribute to greenhouse gas emissions.

The bill requires the Institute to provide training and education to designers, which may involve the use of water-intensive equipment and technology, such as printers and copiers. Additionally, the Institute may require the use of water for cleaning and maintenance purposes. The bill requires the Institute to establish a code of conduct for designers, which may involve the disposal of waste materials and packaging. This could lead to increased waste management challenges and environmental impacts.

To mitigate the potential environmental impacts of the bill, the following measures could be implemented:

- i. The Institute could invest in energy-efficient systems to reduce energy consumption and lower greenhouse gas emissions.
- ii. The Institute could adopt digital documentation systems to reduce the use of paper and minimize paper waste.
- iii. The Institute could encourage the use of sustainable transportation to reduce carbon emissions.
- iv. The Institute could implement water-saving measures, such as low-flow fixtures and efficient irrigation systems to reduce water consumption.
- v. The Institute could implement a recycling and waste management program to minimize waste and reduce the environmental impacts of the Institute's activities.

CHAPTER NINE: CONSIDERATION OF ALTERNATIVES

This Part considers the question whether the proposed regulation is the best regulatory option. The Statutory Instruments Act requires an RMA to undertake an informed comparison of a variety of regulatory and non-regulatory policy measures as options, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements as well as the impacts that these options have on the public and private sector, economic and social impacts, human rights impact, impact on business sector and impact on existing legal framework. The options considered under this part are the following:

9.1. Available options

9.1.1. Option one: Maintenance of the Status Quo - In this case no national policy such as the Designers Registration Bill is developed

9.1.2 Option two: Voluntary Professional Associations

An alternative to the Bill is the establishment of voluntary professional associations for designers in Kenya. These associations could be modelled after similar organizations in other countries. Membership in these associations could be open to all designers who meet certain criteria, such as having a degree in design or a certain number of years of experience.

The benefits of voluntary professional associations include:

- They are less bureaucratic and easier to set up than a statutory body.
- They can provide a platform for designers to network, share knowledge, and collaborate on projects.
- They can offer continuing education and training programs to help designers stay up-to-date with the latest trends and technologies.
- They can provide a code of conduct and ethics to guide the behavior of members and maintain industry standards.

However, voluntary professional associations may not have the same level of authority or recognition as a statutory body. Additionally, they may not be able to enforce standards or discipline members as effectively as a statutory body.

9.1.3 Option three: Industry-Led Standards and Certification

Another alternative to the Bill is for the design industry to develop its own standards and certification processes. This approach would involve industry leaders and stakeholders coming together to establish best practices, guidelines, and certification criteria for designers.

The benefits of this model include:

- More responsive to the specific needs and challenges of the design industry in Kenya.
- They can be developed and implemented more quickly and easily than a statutory body.
- They can provide a way for designers to demonstrate their skills and expertise to clients and other stakeholders.
- They can help to promote innovation and excellence in the design industry.

However, industry-led standards and certification may not carry the same weight or credibility as a statutory body. Additionally, they may not be able to address issues related to consumer protection or ethical practice as effectively as a statutory body.

9.1.4. Collaboration with Existing Regulatory Bodies

Another alternative to the Bill is for the design industry to collaborate with existing regulatory bodies in Kenya. For example, the design industry could work with the Kenya Bureau of Standards (KEBS) to develop standards and guidelines for design services. The benefits of collaboration with existing regulatory bodies include:

- It can leverage the resources and expertise of existing regulatory bodies to develop standards and guidelines for the design industry.
- It can provide a way for designers to access existing regulatory frameworks and mechanisms for resolving disputes and complaints.
- It can help to promote consistency and coherence across different industries and sectors in Kenya.
- It can provide a platform for designers to engage with other stakeholders and contribute to the development of national policies and strategies.

However, collaboration with existing regulatory bodies may not fully address the unique needs and challenges of the design industry. Additionally, it may be difficult to ensure that the interests of designers are represented and protected within existing regulatory frameworks.

9.1.5. Development of a Design industry regulatory body

The establishment of an industry regulatory body through enactment of the Institute of designers of Kenya Bill would promote professionalism, protect consumers' interests, contribute to economic development, and facilitate capacity building and knowledge sharing within the industry. By establishing standards, guidelines, and mechanisms for quality control and ethical practices, the regulatory body would ensure the growth and sustainability of the design industry in Kenya.

9.2 Preferred Option

Based on the above analysis it is clear the fifth option (**Development of a Design industry regulatory body**) is the preferred option. It is clear that the benefits and impact of promulgating the Bill by far outweigh any estimated cost of its implementation. The other two options have negative impact in addressing the problem

9.3. Unintended Consequences

The development of the bill may have unintended consequences that could impact various aspects of the design industry in Kenya. These unintended consequences can arise due to the nature of the bill, its implementation and the potential effects on different stakeholders.

It is important to note that while some consequences may be positive, others may have negative implications.

- i. One potential unintended consequence of the Bill is the potential for increased regulation and bureaucracy within the design industry. The bill may introduce new licensing requirements, certification processes and regulatory frameworks that designers need to adhere to. While these measures aim to ensure professionalism and quality standards within the industry, they may also create additional administrative burdens for designers and design firms. This could potentially hinder innovation and creativity by diverting resources towards compliance rather than design work.
- ii. Another unintended consequence could be a potential impact on small-scale designers and freelancers. The Bill may introduce stricter eligibility criteria or requirements for membership in the institute. This could potentially exclude smaller designers who do not meet these criteria from accessing certain benefits or opportunities provided by the institute. As a result, there may be a concentration of resources and opportunities among a select group of designers, potentially limiting diversity and inclusivity within the industry
- iii. The Bill may have unintended consequences on the affordability and accessibility of design services. If the bill introduces additional costs or fees for designers to comply with regulatory requirements or maintain their membership in the institute, these costs may be passed on to clients. This could potentially lead to an increase in the overall cost of design services, making them less affordable for certain individuals or businesses. Furthermore, if certain designers are excluded from accessing benefits or opportunities provided by the institute, it may limit their ability to compete in the market and offer competitive pricing.

- iv. There may be unintended consequences related to intellectual property rights and copyright issues. The Bill may introduce new provisions or regulations regarding the protection of intellectual property within the creative design industry. While this aims to safeguard designers' rights and encourage innovation, it may also create complexities and challenges in terms of enforcement and compliance. Designers may need to navigate through additional legal requirements and processes, potentially leading to increased costs and delays in bringing their designs to market.
- v. Another potential unintended consequence is the impact on education and training within the design industry. The bill may introduce new requirements or standards for design education programs, accreditation, or certification. While this aims to enhance the quality of design education, it may also create challenges for existing educational institutions or individuals seeking to enter the field. The implementation of new standards or requirements may require significant resources and time for educational institutions to adapt their curricula or obtain necessary accreditations.

CHAPTER 10: COMPLIANCE AND IMPLEMENTATION

10.1. Conforming to legal requirements

While developing the proposed bill based on the above analysis, the following matters are apparent

- a) Exchange of information between Governmental authorities or agencies requires an appropriate regulatory framework. The exchange of information between Governmental authorities or agencies is often restricted to trader consent, disclosure by order of a court, or in the public interest. Also, data protection legislation may affect the obtaining, use and disclosure of personal data
- b) Regulatory-Making Authority and the legal mandate: The Cabinet Secretary has the collective responsibility of developing and implementing the Government's agenda on promoting values and professionals values in professional undertakings
- c) Requirements of the Statutory Instruments Act: Section 5 requires that a regulation making authority conduct public consultations and to drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.
- d) The proposed bill as drafted are clear, consistent, comprehensive, and comprehensible enough to cover all matters relating design practice, training and development in Kenya.

10.2. Recommendation

In view of the above conclusions, **it is recommended that the Institute of Designers of Kenya, 2023 be adopted.**

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**Cabinet Secretary
Ministry of Lands, Public Works, Housing & Urban Development**