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LAWS OF KENYA

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**ETHICS AND ANTI-CORRUPTION COMMISSION ACT**

NO. 22 OF 2011

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**ETHICS AND ANTI-CORRUPTION COMMISSION ACT**

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**NO. 22 OF 2011**

**ETHICS AND ANTI-CORRUPTION COMMISSION ACT**

[Date of assent: 27th August, 2011.]

[Date of commencement: 5th September, 2011.]

**An Act of Parliament to establish the Ethics and Anti-Corruption Commission pursuant to Article 79 of the Constitution, to provide for the functions and powers of the Commission, to provide for the qualifications and procedures for the appointment of the chairperson and members of the Commission, and for connected purposes**

[Act No. 22 of 2011, Corr. No. 18/2012, Act No. 12 of 2012, Act No. 18 of 2014, Act No. 12 of 2015, Act No. 25 of 2015, Act No. 47 of 2016.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Ethics and Anti-Corruption Commission Act, 2011.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to ethics and anti-corruption matters;

“**chairperson**” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution and the procedure set out in section 6;

“**Commission**” means the Ethics and Anti-Corruption Commission established under section 3 of this Act;

“**Kenya Anti-Corruption Commission**” means the Kenya Anti-Corruption Commission established by section 6 of the Anti-Corruption and Economic Crimes Act, 2003;

“**Salaries and Remuneration Commission**” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“**secretary**” means the Secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution, in accordance with the procedure set out in section 16.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

## PART II – ADMINISTRATION

**3. Establishment of the Commission**

(1) There is established an Ethics and Anti-Corruption Commission.

(2) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—

- (a) acquire, hold, charge and dispose movable and immovable property; and
- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may lawfully be done or performed by a body corporate.

(3) The Commission shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

**4. Composition and appointment of the Commission**

The Commission shall consist of a chairperson and four other members appointed in accordance with the provisions of the Constitution and this Act.

[Act No. 12 of 2015, s. 2.]

**5. Qualifications for appointment as chairperson or member**

(1) A person shall be qualified for appointment as the chairperson if that person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and experience of not less than fifteen years in any of the following fields—
  - (i) ethics and governance;
  - (ii) law;
  - (iii) public administration;
  - (iv) leadership;
  - (v) economics;
  - (vi) social studies;
  - (vii) audit;
  - (viii) accounting;
  - (ix) fraud investigation;
  - (x) public relations and media; or
  - (xi) religious studies or philosophy; and
- (d) has had a distinguished career in their respective field.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

- (a) meets the requirements of Chapter Six of the Constitution.
- (b) holds a degree from a University recognized in Kenya;

- (c) has knowledge and experience of not less than ten years in any of the following fields—
- (i) ethics and governance;
  - (ii) law;
  - (iii) public administration;
  - (iv) leadership;
  - (v) economics;
  - (vi) social studies;
  - (vii) audit;
  - (viii) accounting;
  - (ix) fraud investigation;
  - (x) public relations and media; or
  - (xi) religious studies or philosophy; and
- (d) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a chairperson or as a member if the person—

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a felony; or
- (d) has been removed from public office for contravening the provisions of the Constitution or any other law.

(4) Subsection (3)(a) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

**6.** Deleted by Act No. 25 of 2015, Sch.

### **7. Term of Office**

(1) The chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.

(2) The chairperson and members of the Commission shall serve on a part-time basis.

[Act No. 12 of 2015, s. 3.]

### **8. Oath of Office**

Before assuming office, the chairperson and members of the Commission shall take and subscribe to an oath of office as prescribed under the First Schedule.

### **9. Vacancy**

The office of the chairperson or a member shall become vacant if the holder—

- (a) dies;
- (b) resigns from office, by a notice in writing addressed to the President;
- (c) is convicted of a felony and sentenced to imprisonment;

- (d) is absent from three consecutive meetings of the Commission without good cause; or
- (e) is removed from office under any of the circumstances specified in Article 251 of the Constitution.

**10. Filling of vacancy**

(1) Whenever a vacancy arises in the membership of the Commission, the Public Service Commission shall, within fourteen days—

- (a) invite applications from persons who qualify for nomination and appointment by advertisement in at least two daily newspapers of national circulation;
- (b) consider the applications received to determine their compliance with the provisions of the Constitution and this Act;
- (c) shortlist the applicants;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist three qualified applicants for each vacancy; and
- (f) forward the names of the qualified persons to the President.

(2) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (1)(f), select the person to fill the vacancy in the Commission and forward the name of the person to the National Assembly for approval.

(3) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of an applicant under subsection (2), vet and consider the applicant, and may approve or reject applicants for any or all vacancies in the Commission.

(4) Where the National Assembly Approves of an applicant, the Speaker of the National Assembly shall forward the name of the approved applicant to the President for appointment.

(5) The President shall, within seven days of receipt of the name of the approved applicant from the National Assembly, by notice in the Gazette appoint the applicant to the Commission.

(6) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(7) Where a nominee is rejected by the National Assembly under subsection (6), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the Public Service Commission under subsection (1)(f).

(8) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (1), the provisions of subsections (1) and (2) shall apply.

(9) In short listing, nominating or appointing persons to fill a vacancy in the Commission, the Public Service Commission, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

[Act No. 12 of 2015, s. 4.]



**11. Additional functions of the Commission**

(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

- (a) in relation to State officers—
  - (i) develop and promote standards and best practices in integrity and anti-corruption;
  - (ii) develop a code of ethics;
- (b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- (c) receive complaints on the breach of the code of ethics by public officers;
- (d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;
- (e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- (f) oversee the enforcement of codes of ethics prescribed for public officers;
- (g) advise, on its own initiative, any person on any matter within its functions;
- (h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;
- (i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- (j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

(2) *Deleted by Act No. 18 of 2014, Sch.*

(3) The Commission may cooperate and collaborate with other State organs and agencies and any foreign government or international or regional organisation in the prevention and investigation for corruption.

(4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

(5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate.

(6) The functions of the Commissioners shall be to—

- (a) assist the Commission in policy formulation and ensure that the Commission and its staff, including the Secretary perform their duties to the highest standards possible in accordance with this Act;
- (b) give strategic direction to the Commission in the performance of its functions as stipulated in this Act;
- (c) establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sector;
- (d) deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the commission or its staff; and
- (e) deal with reports of conduct amounting to maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff.

(7) The Commissioners shall meet at least once every quarter or as often as the need arises for the execution of their functions.

[Corr. No. 18/2012, Act No. 18 of 2014, Sch., Act No. 47 of 2016, s. 25.]

## **12. General principles**

In fulfilling its mandate, the Commission shall, in addition to the values and principles under Article 10 of the Constitution, observe the following principles—

- (a) accommodate the diversity of Kenyan people;
- (b) impartiality and gender equity; and
- (c) the rules of natural justice.

## **13. Powers of the Commission**

(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution, this Act, and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have the power to—

- (a) educate and create awareness on any matter within the Commission's mandate;
- (b) undertake preventive measures against unethical and corrupt practices;
- (c) conduct investigations on its own initiative or on a complaint made by any person;
- (d) conduct mediation, conciliation and negotiation; and
- (e) hire such experts as may be necessary for the performance of any of its functions.

[Act No. 18 of 2014, Sch.]

## **14. Committees of the Commission**

(1) The Commission may establish committees for the effective discharge of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.

(3) Any person co-opted into the Commission under subsection (2) may attend the meetings of the Commission and participate in its deliberation, but shall have no power to vote.

#### **15. Procedure for the Commission**

(1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

#### **16. Secretary to the Commission**

(1) The Commission shall, through an open, transparent and competitive recruitment process, and with the approval of the National Assembly, appoint a suitably qualified person to be the Secretary to the Commission.

(2) A person shall be qualified for appointment as the Secretary of the Commission if the person—

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree from a university recognised in Kenya;
- (c) has had at least ten years proven experience at management level;
- (d) has experience in any of the following fields—
  - (i) ethics and governance;
  - (ii) law;
  - (iii) public administration;
  - (iv) leadership;
  - (v) economics;
  - (vi) social studies;
  - (vii) audit;
  - (viii) accounting;
  - (ix) fraud investigation;
  - (x) public relations and media; or
  - (xi) religious studies or philosophy;
- (e) meets the requirements of Chapter Six of the Constitution.

(2) The Secretary shall be a State officer and shall serve on such terms and conditions as the Commission may determine.

(3) Before assuming office, the Secretary shall take and subscribe to the oath of office set out in the First Schedule.

(4) The Secretary shall hold office for one term of six years and shall not be eligible for reappointment.

(5) The Commission shall cause the vacancy in the office of the Secretary to be advertised at least three months before the expiry of the incumbent's term.

(6) The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission.

(7) The Secretary shall be—

- (a) the chief executive officer of the Commission;

- (b) the accounting officer of the Commission; and
- (c) responsible for—
  - (i) carrying out of the decisions of the Commission;
  - (ii) day-to-day administration and management of the affairs of the Commission;
  - (iii) supervision of other employees of the Commission;
  - (iv) the performance of such other duties as may be assigned by the Commission.

**17. Removal from office of the Secretary**

- (1) The Secretary may be removed from office by the Commission for—
  - (a) inability to perform functions of the office arising out of physical or mental incapacity;
  - (b) gross misconduct or misbehaviour; or
  - (c) incompetence; or
  - (d) violation of the Constitution.

(2) Where the question of the removal of the Secretary under subsection (1) arises, the Commission shall inform the Secretary in writing of the reasons for the intended removal and shall give the Secretary the opportunity to respond thereto in writing.

**18. Staff of the Commission**

- (1) There shall be a secretariat of the Commission.
- (2) The secretariat shall comprise of—
  - (a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and
  - (b) such public officers as may be seconded by the Public Service Commission to the Commission upon its request.

(3) For purposes of this Act, a public officer who is seconded to the Commission under subsection (2)(b), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to matters of ethics, leadership and anti-corruption, and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

- (4) The Commission shall, in the appointment of employees, ensure that—
  - (a) at least one-third of the employees are of either gender;
  - (b) the appointment reflect ethnic and regional diversity of the people of Kenya.

**19. Seal of the Commission**

(1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorised in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

#### **20. Protection from personal liability**

Nothing done by a member of the Commission or by any person working under the instructions of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

#### **21. Code of conduct**

Members and the employees of the Commission shall subscribe to the code of conduct set out in the Third Schedule.

### **PART III – FINANCIAL PROVISIONS**

#### **22. Funds of the Commission**

(1) The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed to the National Assembly and made public before use.

#### **23. Remuneration and allowances**

A member of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

#### **24. Annual estimates**

(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for the—

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development of activities of the Commission; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations,

equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

## **25. Financial year of the Commission**

The financial year of the Commission shall be—

- (a) the period beginning on the day on which this Act comes into operation and ending on the following thirtieth June;
- (b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

## **26. Accounts and audit**

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

## **27. Reports**

(1) The Commission shall, at the end of each financial year cause an annual report to be prepared.

(2) The Commission shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission may consider appropriate relating to the Commission's functions;
- (d) any recommendations made by the Commission to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law;
- (g) the state of compliance with the provisions of section 18(4)(b); and
- (h) any other information relating to its functions that the Commission considers necessary.

(4) The Commission shall cause the annual report to be published and the report shall be publicized in such manner as the Commission may determine.

[Act No. 12 of 2015, s. 5.]

## **PART IV – MISCELLANEOUS PROVISIONS**

### **28. Independence of the Commission**

Except as provided in the Constitution and this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

**29. Management of information**

(1) The Commission shall publish and publicise important information within its mandate affecting the nation.

(2) A request for information by a citizen—

- (a) shall be addressed to the Secretary or such other person as the Commission may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant on the following grounds—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Commission;
- (c) failure of payment of a prescribed fee; or
- (d) failure of the applicant to satisfy confidentiality requirements by the Commission.

(4) The right of access to information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

(5) Every member and employee of the Commission shall sign a confidentiality agreement.

**30. Publicity**

The Commission shall, in such manner as it shall consider appropriate, publish a notice for Public information specifying—

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

**31. Legal advice**

The Commission may request legal advice from the Attorney-General.

**32. Regulations**

The Commission may make regulations for the better carrying out of this Act, with respect to—

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which it is responsible under this Act;
- (b) the disciplinary control and termination of appointments of employees of the Commission; and
- (c) the practice and procedure of the Commission in the exercise of its functions under this Act.

**PART V – SAVINGS AND TRANSITIONAL PROVISIONS****33. Savings**

Notwithstanding the provisions of this Act—

- (a) any orders or notices made or issued by the Kenya Anti-Corruption Commission shall be deemed to have been made or issued under this Act;
- (b) any function transaction, investigation, prosecution carried out by or on behalf of the Kenya Anti-Corruption Commission, civil proceedings or any other legal or other process in respect of any matter carried out under the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003) or any other law, before the commencement of this Act, shall be deemed to have been carried out under this Act.
- (c) Save as otherwise provided for in this Act, any undertaking or responsibility falling on the Kenya Anti-Corruption Advisory Board shall be assumed by the Commission.

#### **34. Transfer of staff of the Kenya Anti-Corruption Commission**

(1) Subject to subsection (4), a person who immediately before the commencement of this Act was serving on contract as a member of staff of the Kenya Anti-Corruption Commission, other than the Director and Deputy Directors, shall, at the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term.

(2) Every person who immediately before the commencement of this Act was an employee of the Government attached to the Kenya Anti-Corruption Commission shall, upon the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term of the contract.

(3) Notwithstanding subsections (1) and (2), and before appointing or employing any member of staff of the Kenya Anti-Corruption Commission who wishes to work for the Commission, the Commission shall—

- (a) require such a person to make an application for employment or appointment to the Commission; and
- (b) using the criteria determined by the Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of a Commission.

(4) An applicant who fails to meet the vetting criteria under subsection (3) shall not be employed or appointed by the Commission and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment.

#### **35. Transfer of assets, etc.**

(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Kenya Anti-Corruption Commission, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering



authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

**36. Amendment of section 2 of No. 3 of 2003**

The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), is amended in section 2, by deleting the definition of “Commission” and substituting therefor the following new definition—

“**Commission**” means the Ethics and Anti-Corruption Commission established under section 3 of Ethics and Anti-Corruption Commission Act, 2011, pursuant to Article 79 of the Constitution.

[Act No. 12 of 2012, Sch.]

**37. Repeal of Part III of No. 3 of 2003**

The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), is amended by repealing Part III, save for Part IIIB for ninety days or until the Commission comes into place, whichever comes earlier.

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FIRST SCHEDULE

[Section 8.]

OATH/AFFIRMATION OF THE OFFICE OF  
CHAIRPERSON/ MEMBER/SECRETARY

I ..... having been appointed (the Chairperson/member of/Secretary) to the Ethics and Anti-Corruption Commission do swear/solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will of prejudice (SO HELP ME GOD).

Sworn/Declared by the said .....

Before me this ..... day of .....

.....  
*Chief Justice*

## SECOND SCHEDULE

[Section 15.]

## PROCEEDINGS OF MEETINGS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Commission in any financial year.
2. A meeting of the Commission shall be held on such date and at such time as the Commission shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be two-thirds of all the members of the Commission.
6. The Chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson and the Secretary.
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
11. Except as provided by this Schedule, the Commission may regulate its own procedure.
12. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

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### THIRD SCHEDULE

[Section 21.]

#### CODE OF CONDUCT FOR MEMBERS OF AND EMPLOYEES OF THE COMMISSION

##### **1. Impartiality and independence of members**

(1) Every member and employee of the Commission shall impartially and independently perform the functions of a member in good faith and without fear, favour or prejudice, and without influence from—

- (a) the Government;
- (b) any public officer;
- (c) any political party;
- (d) candidate participating in an election; or
- (e) any other person or authority.

##### **2. Independence from political or public office**

(1) A member or employee of the Commission shall not, during tenure of office, be eligible for—

- (a) appointment or nomination to a political office; or
- (b) appointment to another public office.

(2) A member of the Commission may not—

- (a) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
- (b) make private use of or profit from any confidential information gained as a result of being a member of the Commission; or
- (c) divulge any information to any third party, save in the course of official duty.

**3. Disclosure of conflicting interests**

(1) If a member or an employee is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member or employee shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

(2) A member or employee whose personal interest conflicts with their official duties shall—

- (a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and
- (b) refrain from participating in any deliberations with respect to the matter.

(3) No member of staff of the Commission shall transact business with the Commission directly or indirectly.

**4. Professionalism**

A member or employee of the Commission shall—

- (a) perform their duties in a manner that maintains public confidence in the Commission;
- (b) treat the public and colleagues with courtesy and respect;
- (c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and
- (d) respect the rights and freedom of all persons that he may interact with.

**5. Improper enrichment**

A member or employee of the Commission shall not—

- (a) use their office or organisation to improperly enrich themselves or others;
- (b) accept or request gifts or favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business of the Commission; or
- (c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others.

**6. Integrity in private affairs**

A member or employee shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Commission as a whole and shall—

- (a) not evade paying taxes;
- (b) not neglect their financial obligations;
- (c) submit an annual declaration of their income, assets and liabilities to the Commission responsible for such declarations from public officers;

- (d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Commission; and
- (e) not preside over or play a central role in the organisation of a fundraising activity.

#### **7. Sexual harassment**

A member or employee shall not sexually harass a member of the public or colleague. Sexual harassment includes—

- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature; or
- (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality.

#### **8. Nepotism**

A member or employee shall not practice favouritism on the grounds of tribe, race, kin, culture, sex or acquaintance or otherwise in performance of their duties.

#### **9. Privileged information and security of interests of the State**

A member or employee shall—

- (a) not act for foreigners in a manner detrimental to the security interest of Kenya; and
- (b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure.

#### **10. Application of the Public Officers Ethics Act**

This Code is in addition to the provisions of the Public Officers Ethics Act and where there is a conflict between the Code and the Act, the provisions of the Act shall prevail.

#### **11. Breach of Code**

Any breach of the Code by a member or an officer of the Commission shall be treated as misbehaviour for a member and misconduct for an officer.

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