

LEADERSHIP AND INTEGRITY REGULATIONS, 2015

[L.N. 13/2015.]

PART I — PRELIMINARY**1. Citation**

These Regulations may be cited as the Leadership and Integrity Regulations, 2015.

2. Interpretation

In these Regulations unless the context otherwise requires—

“**Act**” means the Leadership and Integrity Act, 2012 (No. 19 of 2012)

“**annually**” means calendar period of January to December of each year;

“**Code**” has the meaning assigned to it under section 2 of the Act;

“**Commission**” has the meaning assigned to it under section 2 of the Act;

“**gift**” means anything that confers a benefit to the recipient;

“**public entity**” has the meaning assigned to it under section 2 of the Act;

“**public officer**” has the meaning assigned to it under section 2 of the Act;

“**statement of account**” means a document issued to a customer listing financial transactions undertaken over a specified period of time; and

“**value of gift**” means the fair market value of the gift at the time and the place it is presented.

3. Application of Regulations

(1) These Regulations shall apply to all public entities, State officers and public officers.

(2) The Commission shall, in accordance with section 4(2) of the Act, oversee the implementation and enforcement of these Regulations.

PART II — PROVISIONS RELATING TO FUNCTIONS AND POWERS OF PUBLIC ENTITIES AND GIFTS TO STATE OFFICERS OR PUBLIC OFFICERS**4. Commission may request public entity to carry out functions**

(1) The Commission may, in undertaking its mandate under section 4 of the Act, and in writing, request a public entity to carry out a function or exercise certain powers.

(2) The Commission shall, in making a request under paragraph (1), state—

- (a) the function required or powers to be exercised by the public entity; and
- (b) the period within which the entity shall report to the Commission.

(3) The Commission may determine—

- (a) the manner in which a public entity is to undertake a function or exercise a power under paragraph (2)(a);
- (b) the format in which the public entity shall present the report under paragraph 2(b).

(4) Where a public entity does not comply with a request made under paragraph (1) within the period stipulated in the request, the Commission shall make an application to the High Court under section 4(5) of the Act.

5. Prohibition of gifts or other benefits to State officers and public officers

(1) Subject to the Act and provisions of these Regulations, a State officer or a public officer shall not solicit a gift including soliciting or acceptance of a non-monetary gift in the form of a gratuity, hospitality, free passages, services or favours.

Leadership and Integrity

[Subsidiary]

(2) Without limiting the generality of paragraph (1), a State officer or a public officer may receive a non-monetary gift in his or her official capacity if the value of that gift does not exceed twenty thousand shillings, but—

- (a) a state or public officer shall not receive such a gift if in the opinion of that officer the gift is given with the intention of compromising his or her integrity, objectivity, impartiality or create potential conflict of interest; or
- (b) a State officer or a public officer who receives a gift whose value exceeds twenty thousand shillings shall, within forty-eight hours of reporting to the office, surrender it to the public entity in which the officer is employed.

(3) A State officer or a public officer who receives a non monetary gift under paragraph (2) shall do so where—

- (a) the offer and receipt of the gift is done with utmost transparency and openness;
- (b) the offer and receipt of the gift is not done in secrecy or exclusivity of the donor and recipient;
- (c) the person making the offer is present at the time of presentation.

(4) A State officer or a public officer who receives a gift in terms of this regulation shall, irrespective of the monetary value of the gift, declare the gift received to the public entity which the public officer represents in a manner prescribed in Form A, in the Schedule.

(5) The public entity shall cause a gift declared under paragraph (4) to be entered in the register as required under section 14(6) (a) of the Act.

6. Gift register

(1) Every public entity shall, and in accordance with section 14 (6) of the Act, keep and maintain registers of—

- (a) gifts received by State officers or public officers; and
- (b) gifts given by the public entity to State officers or public officers.

(2) The registers of gifts referred to under paragraph (1) shall be in a manner specified in Forms B - I and B - II respectively, in the Schedule.

7. Transportation, storage and disposal of gifts

(1) Subject to internal policies of the relevant public entity, where a State officer, a public officer or a public entity has received a gift that cannot be immediately transported, the relevant public entity shall make arrangements for transportation of the gift.

(2) A public entity shall store any gift received and maintain it in good condition until such time as it is donated or otherwise utilized.

(3) A gift that is surrendered to a public entity under regulation 5 (5) shall be deemed to be public property and shall be received and disposed of in accordance with the provisions of Public Procurement and Asset Disposal Act, 2005 (No. 3 of 2005).

8. Public entity may utilize gift

Where a public entity receives a gift under section 14 of the Act, and decides to utilize the gift, it shall register it in the same manner as any item procured by the public entity.

9. Reporting of gifts

(1) A public entity shall at the close of every financial year furnish the Commission with a report specifying—

- (a) all gifts received;
- (b) any gifts the entity intends to dispose of; and
- (c) any gifts the public entity has disposed of.

(2) Where a public entity has not received, disposed of or intends to dispose of, any gift, it shall nonetheless make the report in accordance with paragraph (1).

(3) The report under paragraph (1) shall be submitted to the Commission within thirty days after the close of the financial year.

(4) The Commission shall review the report and if it ascertains that the State officer or the public officer has breached provisions relating to gifts, the Commission shall inform the public entity and require disciplinary measures to be taken against that officer.

PART III — CONFLICT OF INTEREST

10. Duty to declare conflict of interest

(1) A State officer or a public officer shall declare a personal interest to the public entity where he or she is employed in a manner prescribed in Form C in the Schedule, if that personal interest conflicts with the officer's official duties.

(2) Notwithstanding paragraph (1), a declaration under this regulation may be made to the Commission where—

- (a) the accounting officer of a public entity has a conflict of interest;
- (b) the public entity is yet to open a register in accordance with regulation 13;
- (c) in the opinion of the State officer or public officer, it is prejudicial to his or her interest to declare the conflict of interest to the public entity;
- (d) the State officer or public officer is desirous of declaring the conflict of interest to both the public entity and the Commission.

(3) The Commission or the public entity shall give directions to the officer making a declaration under these Regulations.

11. Duty to declare conflict of interest by members of Senate, National Assembly and County Assembly

(1) A member of the National Assembly, Senate or a County Assembly who wishes to speak, participate or take part in any matter in which the member has a personal interest, pecuniary interest, proprietary interest, personal relationships or business relationships shall first declare that interest.

(2) The clerk of the Senate, the National Assembly or a county assembly shall maintain a register of conflicts of interest in accordance with section 16(10) of the Act.

12. Register of conflict of interest

(1) Every public entity shall open and maintain a register of Conflict of Interest in a manner prescribed in Form E in the Schedule.

(2) The Register referred to under paragraph (1) shall be in the custody of the accounting officer of the public entity or his or her nominee.

(3) The Register under this regulation shall contain—

- (a) name and address of the State officer or the public officer;
- (b) registrable interest;
- (c) nature of the conflict of interest;
- (d) date the conflict of interest is declared;
- (e) directions given by the commission or public entity to the officer making the declaration;
- (f) date of entry in the register;
- (g) signature of the officer giving directions on behalf of the Commission or the public entity.

13. Inspection of register of conflict of interest

(1) Any person may make an application to a public entity, the Commission, Clerk of the Senate, National Assembly or a County Assembly to inspect the Register of Conflict of Interest in a manner prescribed in Form F in the Schedule.

[Subsidiary]

- (2) An application made under paragraph (1) shall contain—
- (a) the full names and address of the applicant;
 - (b) the specific information that is sought; and
 - (c) the purpose for which the information is intended to be used.

(3) A public entity, the Commission, the Clerk of the Senate, National Assembly or a County Assembly shall within seven days acknowledge receipt of an application under paragraph (2), and avail the register for inspection.

PART IV — BANK ACCOUNT OUTSIDE KENYA

14. Application to open, operate or control a bank account outside Kenya

(1) A State officer or public officer, who wishes to open, operate or control or continue to operate or control a bank account outside Kenya under section 19 of the Act, shall make an application to the Commission in a manner prescribed in Form G in the Schedule.

- (2) An application under paragraph (1) shall specify—
- (a) applicant's personal details;
 - (b) applicant's employment details;
 - (c) details of the account;
 - (d) estimated period for operating the account;
 - (e) any other relevant information.

(3) An application under paragraph (1) shall be supported by certified copies of the following documents—

- (a) identity card or valid passport;
- (b) passport size photograph;
- (c) the beneficiary's identity card, birth certificate, valid passport, travel permit, (whichever is applicable);
- (d) documentary evidence for the purpose which the account is intended;
- (e) tax compliance certificate; and
- (f) any other relevant document.

(4) An applicant who wishes to continue operating an account shall, in addition to the application made under paragraph (1), attach a written and signed authority allowing the Commission to verify the statements and any other information from the financial institution outside Kenya in a manner prescribed in Form H in the Schedule.

(5) A State or public officer who operates or controls a bank account outside Kenya shall, not later than January of succeeding year, submit statements of the account annually to the Commission.

(6) The statements of the account referred to under paragraph (5) shall cover the period of January to December of each year.

(7) Notwithstanding the provisions of this regulation, the Commission may require an applicant to furnish additional information.

15. Determination of application and approval of account

(1) In determining an application to open or continue to operate a bank account outside Kenya, the Commission shall consider the following grounds—

- (a) whether an account is for educational purposes in respect of the benefit of the applying officer, his or her spouse, child or any other beneficiary; or
 - (b) whether an account is for medical purposes in respect of the officer, his or her spouse, child or any other beneficiary; or
 - (c) whether an account is for a public officer who works in a diplomatic mission abroad; or
-

(d) any other reasonable grounds that the Commission may determine.

(2) The Commission shall process an application as soon as practicable but in any event the process shall not exceed six months.

(3) Where the Commission approves an application it shall issue the applicant with an approval in writing to—

- (a) open a new account;
- (b) continue to operate an existing account.

(4) A State officer or a public officer who has obtained approval under paragraph (3) shall submit to the bank outside Kenya—

- (a) a copy of the approval to open an account;
- (b) a copy of the approval to continue to operate an existing account; and
- (c) authority to verify account details.

(5) Notwithstanding the provisions of these Regulations, an approval given by the Commission shall be subject to the provisions of any other written law regarding the opening, operation or control of bank accounts outside Kenya.

16. Rejection or application

(1) The Commission shall not approve an application made under regulation 16 unless the applicant has satisfied the conditions stated therein.

(2) Where the Commission declines to give an approval for opening or continuing to operate a bank account outside Kenya, it shall within fourteen days of the decision, inform the applicant stating the reasons thereof in writing.

(3) An applicant dissatisfied with the decision of the Commission under paragraph (2) may within twenty-one days from the date of notification of the decision, apply to the Commission for review.

(4) The Commission shall consider the application for review within thirty days from the date of lodging the application for review and within fourteen days inform the applicant of its decision.

(5) An applicant dissatisfied with the decision of the Commission under paragraph (4) may seek appropriate orders from the High Court.

17. Officer to operate account for specified purpose

(1) Where approval is granted by the Commission to either open or continue to operate a bank account outside Kenya for a specific purpose, the account shall be used only for purpose for which the application was made.

(2) A State officer or a public officer operating an account outside Kenya who wishes to change the purpose or use the account for an additional purpose other than that for which the account is being operated shall make an application to the Commission.

18. Application for extension to operate a bank account outside Kenya

A State officer or a public officer who has been operating a bank account outside Kenya may apply to the Commission for an extension where the period for which approval had been given is about to expire.

19. Unauthorized operation of an account

(1) The Commission shall, in accordance with section 19 (3) of the Act, determine whether an account is being operated for purposes specified in the application.

(2) Where the Commission determines that an account is not being operated for the intended purpose, the Commission shall, by notice in writing, require the officer to close the said account within twenty-four hours and confirm the closure to the Commission.

(3) Where the duration of the approval issued to the officer to operate a bank account outside Kenya lapses and the officer has not applied for an extension, the Commission shall,

[Subsidiary]

by notice in writing, require the officer to, within twenty-four hours, close the said account and confirm the closure to the Commission.

(4) An officer who operates an account for a purpose other than the one specified in the application, is in breach of the provisions of the Act or these Regulations and shall be subject to disciplinary proceedings in addition to any other action that may be preferred against the officer.

20. Notice of closure of a bank account outside Kenya

A State officer or a public officer who has ceased to operate a bank account outside Kenya shall notify the Commission, in writing, within thirty days of closure of the account.

21. Register

(1) The Commission shall open and maintain a register of all State officers and public officers operating bank accounts outside Kenya.

(2) The Register under paragraph (1) shall contain the following information—

- (a) the name, personal file (PF) or identity card (ID) number and address of the officer;
- (b) the bank name, address, and country in which the account is held;
- (c) the account name, and the bank code;
- (d) the name in which the account is being operated, if not that of the officer;
- (e) the purpose for operating the account;
- (f) the name of the institution to which monies will be transferred where the account is being operated for educational, medical or other purpose;
- (g) the duration of approval for operating the account;
- (h) name of the officer's spouse, child or beneficiary, if the account is operated for the benefit of one of such persons; and
- (i) any other relevant information.

PART V — COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY PROCESS

22. Lodging of complaints

(1) A person wishing to lodge a complaint under the Act may do so orally, anonymously, or in writing to the relevant public entity or the Commission.

(2) Where a complaint under paragraph (1) public entity or the Commission shall reduce writing.

(3) A public entity or the Commission shall within sixty days of receipt of a complaint initiate and conclude any preliminary inquiry it may consider necessary, having regard to the nature of the complaint.

(4) On conclusion of a preliminary inquiry made under paragraph (3), a public entity or the Commission shall determine whether the complaint is legitimate and within its jurisdiction.

(5) Where a public entity or the Commission determines that the complaint does not have merit, it shall inform the complainant where the complainant is known, and the officer against whom the complaint was made.

(6) Where a public entity or the Commission determines that the complaint does not lie within its jurisdiction, it shall—

- (a) refer the matter to the relevant authority;
- (b) inform the complainant where he or she is known;
- (c) inform the officer against whom the complaint was made.

(7) A public entity or the Commission shall, if it determines that a complaint is legitimate and lies within its jurisdiction, commence an investigation.

(8) A person who lodges a complaint to a public entity under the Act shall not be subjected to harassment, suspension, transfer, verbal or other abuse or any other form of unfair treatment.

(9) Any officer who contravenes paragraph (8) commits a breach of the Code and shall be subject to disciplinary proceedings in addition to any other action that may be preferred against him.

23. Information regarding complaints

Upon receipt of a complaint under regulation 23 (1), a public entity or the Commission may, if it is of the view that the complaint does not have sufficient details, call for more information regarding the complaint from any person, within fourteen days.

24. Investigations

Where a public entity or the Commission initiates investigations into breach of Code in accordance with regulation 23(1) the investigations shall be conducted in accordance with the provisions of the Constitution, the Act and any other relevant law.

25. Suspension pending investigations

(1) Subject to paragraph (2), an officer who is under investigations may—

- (a) if the public entity conducting the investigation is the officer's employer, be suspended by that public entity; or
- (b) if employed by a public entity other than the one conducting the investigation be suspended on the recommendation of that public entity; or
- (c) if the Commission conducts the investigation, be suspended on the recommendation of the Commission.

(2) The provisions of paragraph (1) shall apply where the officer is likely to—

- (a) conceal, alter, destroy, remove records, documents or evidence;
- (b) intimidate, threaten or otherwise interfere with witnesses; or
- (c) interfere with investigations in any other manner.

(3) An officer under suspension shall be on half pay pending investigations and determination of the allegations made against the officer.

26. Conclusion of investigations

(1) Where an officer is suspended under regulation 26(1), investigations shall be concluded within twelve (12) months of lodging of the complaint and the findings and the reasons thereof communicated to the complainant and the officer complained against within seven days from the date of the decision.

(2) Despite provisions of paragraph (2), in the event that an investigation against an officer who has been suspended has not been concluded within twelve months, the public entity or the Commission may on reasonable grounds seek for an extension to conclude the investigations from the High Court, with notice to the officer.

27. Investigation report

A public entity or the Commission shall on conclusion of investigation prepare an investigation report containing—

- (a) a summary of the complaint;
 - (b) a description of the investigation undertaken and evidence obtained;
 - (c) findings; and
 - (d) recommendations.
-

[Subsidiary]

28. Referrals

Where a public entity or the Commission, after investigation, is of the opinion that civil or criminal proceedings ought to be preferred against an officer, the public entity shall refer the matter to the appropriate authority in accordance with section 43 of the Act.

29. Clearance and reinstatement

(1) Where on conclusion of investigations it is established that there was no violation of the code—

- (a) a public entity which is the employer of the officer under investigation shall within thirty (30) days inform the officer of that finding and if the officer had been suspended, re-instate, the officer within fourteen (14) days in accordance with the terms of service;
- (b) in the case of a public entity other than the employer of the officer or the Commission, it shall within thirty (30) days inform the officer of that finding and if the officer had been suspended recommend to the relevant public entity the reinstatement of the officer.

(2) Upon reinstatement, the officer's salary, benefits and any other entitlements withheld during the suspension shall be paid to the officer.

(3) The officer shall be reinstated to the position which the officer held immediately prior to suspension or to a reasonably suitable position on terms and conditions not less favourable than those which would have applied had the officer not been on suspension.

(4) In case it shall not be possible to reinstate the suspended officer for whatever reason, then the officer shall be paid benefits equivalent to the employment benefits for the remainder of the duration of the employment, from the date of suspension.

30. Violation of Code

(1) Where, on conclusion of investigations conducted under these Regulations, a public entity or the Commission establishes that there has been a violation of the Code by an officer, the Commission or a public entity may recommend—

- (a) warning or caution;
- (b) suspension;
- (c) dismissal; or
- (d) any other appropriate action against such officer.

(2) Notwithstanding the provisions of paragraph (1), where the Commission has investigated and established a violation of the Code by a State or public officer, the Commission shall require the public entity to take such action against the officer as it may recommend.

(3) The Commission or a public entity shall, when taking a disciplinary action under this regulation, observe the principles of fair administrative action in accordance with Article 47 of the Constitution.

31. Review of decisions

(1) Any person aggrieved by the decision of the public entity or the Commission made in accordance with regulation 31 may apply for review within fifteen days from the date of the decision.

(2) The public entity or the Commission shall review its decision within fifteen days after receipt of an application made under paragraph (1).

32. Court Redress

A person aggrieved by any decision made by a public entity or the Commission under these Regulations, may seek redress from the High Court.

33. Advisory opinion

(1) A State officer or a public entity that requires advice from the Commission on any issue relating to the application of Chapter six of the Constitution shall make such request in writing.

(2) The Commission shall respond to the request made under paragraph (1) within thirty days.

(3) The Commission shall treat the request and its response in confidence.

34. State Officer to commit to the code

(1) Where a public entity has not prescribed a specific leadership and integrity code, a State officer shall on appointment or election to a public office sign and commit to the General Leadership and Integrity Code as set out in Form I, in the Schedule.

(2) Where a public entity has prescribed a specific leadership and integrity code, a State officer shall on appointment or election to a public office sign and commit to that specific leadership and integrity code as specified in Form J of the Schedule.

(3) Subject to paragraph (2), a serving State Officer shall sign and commit to the specific and leadership integrity code seven (7) days after publication of the code.

35. Breach of Regulations

A person who contravenes any provisions of these Regulations whose penalty is not provided for in the Act or these Regulations, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six (6) months, or both.
