

GENERIC ADMINISTRATIVE PROCEDURES FOR THE (NAME OF THE COMMISSION/COUNCIL/COMMITTEE/BOARD) IN THE NATIONAL GOVERNMENT FOR ADMINISTRATION OF PART IV OF THE PUBLIC OFFICER ETHICS ACT, 2003

**THE PUBLIC OFFICER ETHICS ACT
(No. 4 of 2003)**

IN EXERCISE of the powers conferred by Section 33(1) of the Public Officer Ethics Act, 2003, (*Name of the Commission/Council/Committee/Board*) establishes the following administrative Procedures:

THE (*Name of Commission/Council/Committee/Board*) PROCEDURES FOR ADMINISTRATION OF PART IV OF THE ACT

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PART I —PRELIMINARY

1. Citation

These Procedures may be cited as the *(Commission/Council/Committee/Board)* Procedures for Administration of Part IV of the Act.

2. Interpretation

In these Procedures, unless the context otherwise requires:-

"Act" means the Public Officer Ethics Act, 2003;

"Committee" means the Committee established to oversee the management, verification and access to declarations pursuant to clause 10 of the Regulations

"Declarant" means a person who has made a declaration under the Act;

"Declaration form" means the form set out in the Schedule to the Act in accordance with section 26(2) of the Act;

"Declaration year" means the year when the two-year declaration under the Act falls due;

"Final declaration" means a declaration made in accordance with section 27(5) of the Act;

"Initial declaration" means a declaration made in accordance with section 27(3) of the Act;

"Public Officer" has the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010 and includes a **State Officer**;

"Regulations" means the Public Officer Ethics Act (Management, Verification and Access to Financial Declarations) Regulations, 2011, Legal Notice No. 179.

"Secretary/Director General/Chairperson" means the "Secretary/Director General/Chairperson" / Director General/Chief Executive Officer to the (Commission/Council/Committee/Board) appointed under *(cite relevant law)*;

"Two-Year declaration" means a declaration made in accordance with section 26(1) of the Act.

3. Scope of application

These Procedures shall apply to the administration of Part IV of the Act with respect to public officers for which the ***(name of the Responsible Commission)*** is the **Responsible Commission** pursuant to (cite relevant provisions)

4. Commencement

These procedures shall come into force upon publication in the Kenya Gazette.

PART II – PROCEDURE IN RELATION TO DECLARATIONS

5. Administration of the Procedures

The "**Secretary/Director General/Chairperson**" shall administer these Procedures on behalf of the ***(Commission/Council/Committee /Board)***.

6. Establishment of Committee

- (1) The "**Secretary/Director General/Chairperson**" shall within thirty (30) days of commencement of these procedures establish a Committee to oversee the management, verification and access to declarations as contemplated under clause 10 of the Regulations.
- (2) The Committee under sub-paragraph 1 shall consist of public officers drawn from various directorates/departments/units.
- (3) The membership and size shall be determined by the ***Secretary/Director General/Chairperson***".
- (4) The Committee shall have power to co-opt additional members to support its operations.
- (5) The ***(Commission/Council/Committee/Board)***" shall determine the term of the Committee.
- (6) In the discharge of its functions, the Committee shall be responsible to the "**Secretary/Director General/Chairperson**" pursuant to clause 10 of the Regulations;
- (7) In administering these procedures, the Committee established under this part may designate sub-committees from its membership to undertake specific functions
- (8) Nothing under this part shall be construed as prohibiting the ***Commission/Council/Committee/Board*** from designating an officer who is not a member of the Committee to undertake specified tasks in relation to any function under these Procedures provided that

in the performance such tasks, the officer so designated shall be responsible to the Committee

7. Procedure in Submitting Declarations

- (1) A Public Officer shall submit a declaration in the Form set out in the Schedule to the Act.
- (2) The **(Commission/Council/Committee/Board)** may use such measures as may be appropriate to facilitate a Public Officer to acquire the form referred to in sub-paragraph (1).
- (3) **The (Commission/Council/Committee/Board)** may publish the declaration form in a format that may permit the declaration form: -
 - (a) to be rendered in digital format; or
 - (b) to be downloaded from a website and printed out in paper format.
- (4) Where a Public Officer is required to make an initial, two-year or final declaration, the **"Secretary/Director General/Chairperson"** may issue a notification to the Public Officer not less than thirty (30) days before the due date for the declaration.
- (5) Failure to provide a declaration form or to issue a notification under this paragraph shall not be construed as a waiver of the responsibility of the public officer to submit a declaration under the Act.

8. Completion and Submission of Declarations

A Public Officer shall complete and submit the declaration form to the **"Secretary/Director General/Chairperson"** in the form prescribed in the Schedule to the Act;

9. Register of Declarations

- (1) The **(Commission/Council/Committee/Board)** shall maintain a register containing details of each Public Officer who is required to make a declaration under the Act. The register shall include:-
 - (a) Name, personal number, designation, directorate, department or unit;
 - (b) date the Public Officer submitted the declaration form;
 - (c) type of declaration (initial, two-year or final);

- (d) total number of Public Officers who have submitted declarations as at the due date;
 - (e) total number of Public Officers required to submit declarations; and
 - (f) name and signature of officer receiving the declarations;
 - (g) any remarks relating to the declarations.
- (2) The **Secretary/Director General/Chief Executive Officer** shall acknowledge each declaration/submissions.
- (3) A register under this part may be maintained in different documents and formats.

PART III—PROCEDURE IN RELATION TO VERIFICATION AND CLARIFICATION

10. Verifications of Declarations

1. The **(Commission/Council/Committee/Board)** shall analyze, evaluate, inspect and verify each declaration to ascertain if any of the following conditions exist –
- (a) on the face of the declaration, or in light of any other information the **(Commission/Council/Committee/Board)** may have, there is reason to suspect the declaration is false or incomplete;
 - (b) the assets of the declarant appear disproportionate to their known income;
 - (c) the income, assets or liabilities of the declarant raise concerns of impropriety or conflict of interest.

11. Requests for Clarification

- (1) If upon verification under paragraph 10, the **(Commission/Council/Committee/Board)** is of the opinion that any of the stated conditions exist, the declarant shall be given an opportunity to make clarification in accordance with section 28(1) of the Act.
- (2) A request for clarification shall be made in the form prescribed in the Regulations.

- (3) The **(Commission/Council/Committee/Board)** shall, in the register of access to declarations, document the particulars of clarification sought, the mode of communication, the time given to respond, the date and particulars of response, if any.
- (4) Where no explanation is given, or after considering any explanation the declarant may give, the **(Commission/Council/Committee/Board)** is of the opinion that the conditions in subparagraph 10(1) still exist, the **(Commission/Council/Committee/Board)** may, in addition to any other action including criminal and civil proceedings, take disciplinary or other appropriate action against the Public Officer in accordance with the relevant laws, regulations and code of conduct.

PART IV— PROCEDURE FOR THE ACCESS, ACQUISITION AND DISCLOSURE OR PUBLICATION OF INFORMATION IN A DECLARATION

12. Access and Publication of Information in a Declaration

- (1) A person who wishes to access or to publish information in relation to a declaration or clarification under the Act shall-
 - (a) apply to the **(Commission/Council/Committee/Board)** in the form set out in Appendix
 - (b) demonstrate to the **(Commission/Council/ Committee/ Board)** that the applicant has a legitimate interest in the information; and
 - (c) demonstrate to the **(Commission/Council/ Committee/ Board)** that the access to or publication of that information shall be for a good cause and in furtherance of the objectives of the Act.
- (2) Where the information is intended to be disclosed or published, the applicant shall expressly state so in the application.
- (3) Where a person has made an application to the **(Commission/Council/Committee/Board)** in accordance with this paragraph:-
 - (a) the **(Commission/Council/Committee/Board)** shall issue the applicant with an acknowledgement in the form set out in Appendix II;
 - (b) the **(Commission/Council/Committee/Board)** shall inform the declarant of the application in writing;

- (c) the **(Commission/Council/Committee/Board)** shall give the declarant an opportunity to make a representation in writing in relation to the application within 14 days; and
- (d) the **(Commission/Council/Committee/Board)** shall take into consideration the representation by the declarant when determining the application.
- (4) The **(Commission/Council/Committee/Board)** shall determine an application made in accordance with this paragraph and communicate its decision in writing to the applicant within thirty (30) days of receipt of the application.
- (5) The **(Commission/Council/Committee/Board)** or any other person shall not disclose, access, acquire or publish the information in the declaration form except as may be provided in the Act, the Regulations, these Procedures, or any other written law.
- (6) The **(Commission/Council/ Committee/Board)** shall not release or part with the original declaration made by any declarant in satisfying the requirements of this paragraph, unless required under any written law.

PROVIDED that where an original declaration is released the **(Commission/Council/Committee/Board)** shall always retain a certified copy of the declaration.

- (7) The **(Commission/Council/Committee/Board)** shall maintain a register of applications for access to declarations and decisions made under this part setting out:-
 - (a) the name of each applicant;
 - (b) the date each application was received;
 - (c) the name and personal number of the declarant subject of the application;
 - (d) the department or other unit to which the declarant belongs;
 - (e) a brief description of the information applied for;
 - (f) whether the declarant accepts or opposes access to the information applied for;
 - (g) a brief description of the decision made in relation to the application including reasons for denial where applicable; and

(h) the date when decision was communicated to the applicant.

13. Access by a Declarant

- (1) The provisions of paragraph 12 shall not apply where the declarant makes an application to access their own declaration;
- (2) An application by a declarant to access their declaration shall be made to the "**Secretary/Director General/Chairperson**";
- (3) Upon receipt of an application under this paragraph, the "**Secretary/Director General/Chairperson**" shall avail a certified copy to the declarant within thirty 30 days.
- (4)
 - (a) The **(Commission/Council/Committee/Board)** shall not give the declarant access to their declaration unless;
 - (i) the declarant proves their identity; or
 - (ii) in the case of a representative of the declarant, that representative provides proof of their authority to act as such.

14. Decisions of the *(Commission/Council/Committee/Board)* on Access

The **(Commission/Council/Committee/Board)** shall make a decision on an application for access in accordance with the Act, regulations and procedures, which shall be communicated to the applicant.

15. Review

- (1) The applicant may request for a review of the decision in paragraph 14.
- (2) Upon receipt of the request to review its decision, the **(Commission/Council/Committee/Board)** shall consider the request and make a determination within thirty (30) days.

16. Appeal

Any person dissatisfied with the decision of the **(Commission/Council/Committee/Board)** may appeal in accordance with the procedure set out in the Regulations.

PART V — PROCEDURE IN RELATION TO STORAGE, RETENTION AND RETRIEVAL OF DECLARATIONS

17. Mechanisms for Storage, Retention and Retrieval

- (1) The **(Commission/Council/Committee/Board)** shall ensure that appropriate mechanisms are put in place for the safe and secure storage, retention and easy retrieval of the declarations and clarifications;
- (2) The mechanisms established under sub-paragraph (1) may include manual, electronic, microfilm or any other form as the **(Commission/Council/Committee/Board)** may consider appropriate.

18. Cessation of Retention of Information

- (1) Where the period for retaining information obtained in accordance with Part IV of the Act has lapsed, the **(Commission/Council/Committee/Board)** shall determine the action to be taken in relation to that information.
- (2) The "Secretary/Director General/Chairperson" may make a written proposal to the **(Commission/Council/Committee/Board)** in relation to the action to be taken in accordance with sub-paragraph (1).

19. Returns to Ethics and Anti-Corruption Commission

- (1) Pursuant to sections 4 (2) and 6 (3) of the Leadership and Integrity Act, 2012 the **(Commission/Council/ Committee/Board)** shall submit to the **Ethics and Anti-Corruption Commission**, by the 31st July following the submission of two-year declarations, the following information:-
 - (a) the number of public officers in the payroll as at 31st October of the declaration year;
 - (b) the total number of public officers who have submitted declarations within the prescribed time;
 - (c) the total number of public officers who have failed to submit declarations within the prescribed time;
 - (d) any action taken by the **(Commission/**

Council/Committee/Board) in relation to any public officer who has failed to comply with the Act, the regulations and/or these procedures;

- (e) number of declarations verified;
 - (f) findings in respect to the verification of declarations
 - (g) any action taken pursuant to the verification of the declaration
 - (h) any relevant remarks relating to the returns.
- (2) In the case of initial and final declarations, the **(Commission/Council/Committee/Board)** shall, by 31st of July each year, submit to the EACC the information required in subparagraph (1) in respect to the financial year ending on 30th June of the preceding year.
- (3) The report under this part shall be in the form prescribed in Appendix III.

PART VI - GENERAL PROVISIONS

20. Matters not covered by these Procedures

The **(Commission/Council/Committee/Board)** may subject to the Act, Regulations and these procedures, issue guidelines in writing in relation to any matter that has not been provided for in these procedures.

21. Representations to the (Commission/Council/Committee/Board)

The **(Commission/Council/Committee/Board)** may consider representations from any person on any matter to which these Procedures apply.

22. Review and Amendment of these procedures

The **(Commission/Council/Committee/Board)** may from time to time review and/or amend these Procedures as may be necessary.

23. Transition

(Where applicable, provide for revocation of any previous procedures).

CHAIRPERSON
**(COMMISSION/COUNCIL/
COMMITTEE/BOARD)**

REQUEST TO ACCESS A DECLARATION OR CLARIFICATION

Note: A separate form to be completed in respect of a request for information for each declarant.

Part I: Information on Applicant

- 1. Name.....
- 2. National Identity Card/Passport Number.....
- 3. Postal Address.....
- 4. Physical Address.....
- 5. E-mail Address.....
- 6. Occupation.....

Part II: Particulars of Information Applied for

- a) Nature of Information (please tick)
 - 1. Declaration ()
 - 2. Clarification ()
 - 3 Declaration and Clarification ()

- b) Declaration period

Part III: Information on the Person whose declaration is sought to be obtained:

- (a) Name.....
- (b) Directorate/Department (if known).....
- (c) Work Station.....
- (d) Reason for requiring the information:-
 - (i) Official.....
 - (ii) Other reason.....

(e) State precisely the purpose for which the declaration sought will be used

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Part IV: Additional Information

Give any other information you may consider relevant and useful to your request
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.....
.....

Part V: Declaration by Applicant

I,, solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date:

Signature of Applicant.....

.....

APPENDIX II

ACKNOWLEDGEMENT OF REQUEST FOR ACCESS FOR A DECLARATION OR CLARIFICATION

Name of Applicant.....
National Identity Card/Passport Number.....
Name of Organization (where applicable).....
Postal Address.....
Date of Application.....
Delivered by.....
Signature.....

A response on this request will be communicated within thirty (30) days from the date of this acknowledgement.

Name of Receiving Officer :.....
Signature
Date

Stamp:

APPENDIX III

REPORTING TEMPLATE ON THE SUBMISSION OF DECLARATION OF INCOME, ASSETS AND LIABILITIES

(NB: use separate forms for public officers and for state officers)

NAME OF ENTITY:

DATE OF SUBMISSION: DECLARATION YEAR:

NUMBER OF OFFICERS WITHIN JURISDICTION *(differentiate for both State and Public Officers)*:

NUMBER OF OFFICERS WHO SUBMITTED RETURNS:

NUMBER OF OFFICERS WHO DID NOT SUBMIT RETURNS:

LIST OF OFFICERS WHO DID NOT SUBMIT DECLARATION OF INCOME, ASSETS AND LIABILITIES (DIALS)

No	Full name	Designation/Position	Staff/ File No	National Identity Card or Passport Number	Action taken/Remarks
1					
2					
3					
4					
5					

Compiled by:

Designation:.....

Date:.....

Authorized by:.....

Date:.....

Accounting officer/CEO

Official Rubber stamp

(Completed form to be submitted to EACC)

APPENDIX IV

REPORTING TEMPLATE ON THE VERIFICATION OF DECLARATION OF INCOME, ASSETS AND LIABILITIES

(NB: use separate forms for public officers and for state officers)

NAME OF ENTITY:

DECLARATION YEAR:

NUMBER OF DECLARATIONS VERIFIED (*differentiate for both State and Public Officers*):

.....

NUMBER OF DECLARATIONS NOT VERIFIED:

RETURNS OF VERIFICATION OF DECLARATION OF INCOME, ASSETS AND LIABILITIES (DIALS) THAT ARE INCOMPLETE, INCONSISTENT AND FALSIFIED

No	Full name	Designation/Position	Staff/File No	National Identity Card or Passport Number	Status of Declaration	Action taken/Remarks
1						
2						
3						
4						
5						

Compiled by:

Designation:.....

Date:.....

Authorized by:.....

Date:.....

Accounting officer/CEO

Official Rubber stamp

(Completed form to be submitted to EACC)