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LAWS OF KENYA

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## **ANTI-CORRUPTION AND ECONOMIC CRIMES ACT**

NO. 3 OF 2003

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NO. 3 OF 2003

**ANTI-CORRUPTION AND ECONOMIC CRIMES ACT**

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**NO. 3 OF 2003****ANTI-CORRUPTION AND ECONOMIC CRIMES ACT**

[Date of assent: 30th April, 2003.]

[Date of commencement: 2nd May, 2003.]

**An Act of Parliament to provide for the prevention, investigation and punishment of corruption, economic crime and related offences and for matters incidental thereto and connected therewith**

[Act No. 3 of 2003, Act No. 7 of 2007, Act No.10 of 2010, Act No. 22 of 2011, Act No. 12 of 2012, Act No. 18 of 2014, Act No. 47 of 2016.]

**PART I – PRELIMINARY****1. Short title**

This Act may be cited as the Anti-Corruption and Economic Crimes Act.

**2. Interpretation**

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

**“Advisory Board”** means the Kenya Anti-Corruption Advisory Board established under Part III;

**“Assistant Director”** means an Assistant Director of the Commission;

**“benefit”** means any gift, loan, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage;

**“Commission”** means the Independent Ethics and Anti-Corruption Commission established under section 3 of the Independent Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011), pursuant to Article 79 of the Constitution;

**“corruption”** means—

- (a) an offence under any of the provisions of sections 39 to 44, 46 and 47;
- (b) bribery;
- (c) fraud;
- (d) embezzlement or misappropriation of public funds;
- (e) abuse of office;
- (f) breach of trust; or
- (g) an offence involving dishonesty—
  - (i) in connection with any tax, rate or impost levied under any Act; or
  - (ii) under any written law relating to the elections of persons to public office;

**“Director”** *deleted by Act No. 18 of 2014, Sch.;*

**“economic crime”** means—

- (a) an offence under section 45; or
- (b) an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;

**“investigator”** means a person authorized by the Director under section 23 to conduct an investigation on behalf of the Commission;

**“Minister”** means the Minister responsible for integrity issues;

**“private body”** means any person or organisation not being a public body and includes a voluntary organisation, charitable organisation, company, partnership, club and any other body or organisation howsoever constituted;

**“public body”** means—

- (a) the Government, including Cabinet, or any department, service or undertaking of the Government;
- (b) the National Assembly or the Parliamentary Service;
- (c) a local authority;
- (d) any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; or
- (e) a corporation, the whole or a controlling majority of the shares of which are owned by a person or entity that is a public body by virtue of any of the preceding paragraphs of this definition;

**“public officer”** means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;

**“Secretary”** means the Secretary of the Commission appointed under section 16 of the Ethics and Anti-Corruption Act, 2011;

**“unexplained assets”** means assets of a person—

- (a) acquired at or around the time the person was reasonably suspected of corruption or economic crime; and
- (b) whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation.

(2) For the purposes of this Act, a person shall be deemed to be in possession of any record, property, information or other thing if the possession of it is under his control.

[Act No. 7 of 2007, Sch., Act No. 22 of 2011, s. 36, Act No. 18 of 2014, Sch.]

## PART II – APPOINTMENT OF SPECIAL MAGISTRATES

### 3. Power to appoint special magistrates

(1) The Chief Justice may, by notification in the *Kenya Gazette*, appoint as many special Magistrates as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely—



- (a) corruption, bribery and economic crimes and related offences; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in paragraph (a).

(2) A person shall not be qualified for appointment as a special Magistrate under this Act unless he is or has been a chief magistrate or a principal magistrate or an advocate of at least ten years standing.

[Act No. 7 of 2007, Sch., Act No. 47 of 2016, s. 26.]

#### **4. Cases triable by special Magistrates**

(1) Notwithstanding anything contained in the Criminal Procedure Code (Cap. 75), or in any other law for the time being in force, the offences specified in this Act shall be tried by special Magistrates only.

(2) Every offence specified in this Act shall be tried by the special Magistrate for the area within which it was committed, or, as the case may be, by the special Magistrate appointed for the case, or where there are more special Magistrates than one for such area, by one of them as may be specified in this behalf by the Chief Justice.

(3) When trying any case, a special Magistrate may also try any offence, other than an offence specified in this Act, with which the accused may, under the Criminal Procedure Code (Cap. 75), be charged at the same trial.

(4) Notwithstanding anything contained in the Criminal Procedure Code (Cap. 75), a special Magistrate shall, as far as practicable, hold the trial of an offence on a day-to-day basis until completion.

[Act No. 7 of 2007, Sch.]

#### **5. Procedure and powers of special Magistrates**

(1) A special Magistrate may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstance within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall be a pardon for purposes of section 77(6) of the Constitution.

(2) The provisions of the Criminal Procedure Code (Cap. 75) and the Magistrates' Courts Act (Cap. 10) shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Magistrate; and for the purposes of the said provisions, the Court of the special Magistrate shall be deemed to be a court and the person conducting a prosecution before a special Magistrate shall be deemed to be a public prosecutor.

(3) A special Magistrate may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.

PART III – KENYA ANTI-CORRUPTION  
COMMISSION AND ADVISORY BOARD

*A—Kenya Anti-Corruption Commission*

- 6. *Repealed by Act No. 22 of 2011, s. 37.*
- 7. *Repealed by Act No. 22 of 2011, s. 37.*
- 8. *Repealed by Act No. 22 of 2011, s. 37.*
- 9. *Repealed by Act No. 22 of 2011, s. 37.*
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- 13. *Repealed by Act No. 22 of 2011, s. 37.*
- 14. *Repealed by Act No. 22 of 2011, s. 37.*
- 15. *Repealed by Act No. 22 of 2011, s. 37.*

*B—Kenya Anti-Corruption Advisory Board*

**16. Establishment of Advisory Board**

- (1) The Kenya Anti-Corruption Advisory Board is hereby established.
- (2) The Advisory Board shall be an unincorporated body consisting of—
  - (a) one member nominated by each of the following—
    - (i) the Law Society of Kenya;
    - (ii) the Institute of Certified Public Accountants of Kenya;
    - (iii) the International Federation of Women Lawyers (FIDA) Kenya Chapter;
    - (iv) the Kenya Association of Manufacturers;
    - (v) the joint forum of religious organizations described in subsection (3);
    - (vi) the Federation of Kenya Employers;
    - (vii) the Kenya Bankers Association;
    - (viii) the Central Organisation of Trade Unions;
    - (ix) the Association of Professional Societies in East Africa;
    - (x) the Architectural Association of Kenya;
    - (xi) the Institution of Engineers of Kenya; and
    - (xii) the Kenya Medical Association; and
  - (b) the Director.

(3) The joint forum of religious organizations referred to in subsection (2)(a)(v) shall consist of representatives of—

- (a) the Supreme Council of Kenya Muslims;
- (b) the Kenya Episcopal Conference;
- (c) the National Council of Churches of Kenya;
- (d) the Evangelical Fellowship of Kenya; and
- (e) the Hindu Council of Kenya.

(4) The Second Schedule shall apply in respect of the Advisory Board and its members.

#### **17. Functions of Advisory Board**

(1) The principal function of the Advisory Board is to advise the Commission generally on the exercise of its powers and the performance of its functions under this Act.

(2) The Advisory Board shall have such other functions as may be conferred on it by or under this Act.

#### **18. Independence of Advisory Board**

In the performance of its functions, the Advisory Board shall not be subject to the direction or control of any other person or authority and shall be accountable only to Parliament.

**19.** *Deleted by Act No. 18 of 2014, Sch.*

#### **20. Chairman and Vice-chairman**

(1) The Advisory Board shall nominate one of its nominated members to be the Chairman of the Advisory Board and another of its nominated members to be its Vice-chairman.

(2) The members so nominated shall be appointed to their respective offices by the President.

(3) Subject to an earlier resignation or termination, the Chairman and Vice-chairman shall each hold office until his current term as a member of the Advisory Board expires.

#### **21. Secretary to Advisory Board**

The Secretary of the Commission appointed under section 16 of the Ethics and Anti-Corruption Act shall be the Secretary to the Advisory Board.

[Act No. 18 of 2014, Sch.]

#### **22. Procedures of the Advisory Board**

(1) The business and affairs of the Advisory Board shall be conducted in accordance with the Third Schedule.

(2) Except as provided in the Third Schedule, the Advisory Board may regulate its own procedure.

(3) Seven nominated members of the Advisory Board shall constitute a quorum for the transaction of any business of the Board.

(4) The Advisory Board may invite any person to attend any of its meetings and to participate in its deliberations, but such an invitee shall not have a vote in any decision of the Board.

### **PART IV – INVESTIGATIONS**

#### **23. Investigators**

(1) The Secretary or a person authorized by the Secretary may conduct an investigation on behalf of the Commission.

(2) Except as otherwise provided by this Part, the powers conferred on the Commission by this Part may be exercised, for the purposes of an investigation, by the Secretary or an investigator.

(3) For the purposes of an investigation, the Secretary and an investigator shall have the powers, privileges and immunities of a police officer in addition to any other powers the Secretary or investigator has under this Part.

(4) The provisions of the Criminal Procedure Code (Cap. 75), the Evidence Act (Cap. 80), the Police Act (Cap. 84) and any other law conferring on the police the powers, privileges and immunities necessary for the detection, prevention and investigation of offences relating to corruption and economic crime shall, so far as they are not inconsistent with the provisions of this Act or any other law, apply to the Secretary and an investigator as if reference in those provisions to a police officer included reference to the Secretary or an investigator.

[Act No. 7 of 2007, Sch., Act No. 18 of 2014, Sch.]

#### **24. Identification for investigators**

(1) The Commission shall issue identification documentation to an investigator and such identification shall be evidence that the person to whom it is issued is an investigator.

(2) The identification documentation issued by the Commission shall be signed by the Secretary.

[Act No. 18 of 2014, Sch.]

**25. Complaint not investigated**

If the Commission receives a complaint concerning corrupt conduct on the part of any person and the Commission declines to investigate or discontinues its investigation before the investigation is concluded, the Commission shall inform the complainant in writing of its decision and of the reasons for its decision.

**25A. Cessation of investigations**

(1) The Commission may, in consultation with the Minister and the Attorney-General, tender an undertaking in a form prescribed by the Minister, not to institute or continue with investigations against any person suspected of an offence under this Act.

(2) Where the Commissioner intends to take action as specified in subsection (1), it shall by notice in the daily newspapers invite interested persons to approach it for such an undertaking within a period specified in the notice.

(3) An undertaking under this section shall only be made in cases where the suspected person—

- (a) makes a full and true disclosure of all material facts relating to past corruption or economic crime;
- (b) through the Commission, pays or refunds to, or deposit with, the Commission for, all persons affected, any property or money irregularly obtained, with interest thereon at a rate prescribed by the Minister;
- (c) makes reparation to any person affected by his corrupt conduct; and
- (d) pays for all loss of public property occasioned by his corrupt conduct.

(4) The Commission shall publish its intention to make the undertaking by notice in at least two newspapers of national circulation—

- (a) stating the name of the proposed beneficiary of the undertaking;
- (b) stating the offence of which the person is suspected;
- (c) confirming that the person has fulfilled all the conditions set out in subsection (2); and
- (d) inviting any person with an objection to the proposed undertaking to forward their objections to the Commission within a period specified in the notice.

(5) An aggrieved person may object to the proposed undertaking on the grounds that—

- (a) the suspected person has not fully satisfied the conditions set out in subsection (2); or
- (b) he has any other evidence relevant under this section which may affect the Commission's decision regarding the undertaking.

(6) The Commission shall consider all objections submitted and shall take such action as may be appropriate in the circumstances.

(7) The Commission shall not make any undertaking in respect of corrupt conduct or economic crime which leads to circumstances which cause a danger to public safety, law and order.

(8) Any person in respect of whom the Commission makes an undertaking under this section shall be disqualified from holding public office.

[Act No. 7 of 2007, Sch.]

## **26. Statement of suspect's property**

(1) If, in the course of investigation into any offence, the Secretary is satisfied that it could assist or expedite such investigation, the Secretary may, by notice in writing, require a person who, for reasons to be stated in such notice, is reasonably suspected of corruption or economic crime to furnish, within a reasonable time specified in the notice, a written statement in relation to any property specified by the Secretary and with regard to such specified property—

- (a) enumerating the suspected person's property and the times at which it was acquired; and
- (b) stating, in relation to any property that was acquired at or about the time of the suspected corruption or economic crime, whether the property was acquired by purchase, gift, inheritance or in some other manner, and what consideration, if any, was given for the property.

(2) A person who neglects or fails to comply with a requirement under this section is guilty of an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(3) The powers of the Commission under this section may be exercised only by the Secretary.

[Act No. 7 of 2007, Sch., Act No. 18 of 2014, Sch.]

## **27. Requirement to provide information, etc.**

(1) The Commission may apply *ex parte* to the court for an order requiring an associate of a suspected person to provide, within a reasonable time specified in the order, a written statement stating, in relation to any property specified by the Secretary, whether the property was acquired by purchase, gift, inheritance or in some other manner, and what consideration, if any, was given for the property.

(2) In subsection (1), “**associate of a suspected person**” means a person, whether or not suspected of corruption or economic crime, who the investigator reasonably believes may have had dealings with a person suspected of corruption or economic crime.

(3) The Commission may by notice in writing require any person to provide, within a reasonable time specified in the notice, any information or documents in the person's possession that relate to a person suspected of corruption or economic crime.

(4) A person who neglects or fails to comply with a requirement under this section is guilty of an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) No requirement under this section requires anything to be disclosed that is protected by the privilege of advocates including anything protected by section 134 or 137 of the Evidence Act (Cap. 80).

[Act No. 7 of 2007, Sch., Act No. 18 of 2014, Sch.]

## **28. Production of records and property**

(1) The Commission may apply, with notice to affected parties, to the court for an order to—

- (a) require a person, whether or not suspected of corruption or economic crime, to produce specified records in his possession that may be required for an investigation; and
- (b) require that person or any other to provide explanations or information within his knowledge with respect to such records, whether the records were produced by the person or not.

(2) A requirement under subsection (1)(b) may include a requirement to attend personally to provide explanations and information.

(3) A requirement under subsection (1) may require a person to produce records or provide explanations and information on an ongoing basis over a period of time, not exceeding six months.

(4) The six month limitation in subsection (3) does not prevent the Commission from making further requirements for further periods of time as long as the period of time in respect of which each requirement is made does not exceed six months.

(5) Without affecting the operation of section 30, the Commission may make copies of or take extracts from any record produced pursuant to a requirement under this section.

(6) A requirement under this section to produce a record stored in electronic form is a requirement—

- (a) to reduce the record to hard copy and produce it; and
- (b) if specifically required, to produce a copy of the record in electronic form.

(7) In this section, “**records**” includes books, returns, bank accounts or other accounts, reports, legal or business documents and correspondence other than correspondence of a strictly personal nature.

(8) The Commission may by notice in writing require a person to produce for inspection, within a reasonable time specified in the notice, any property in the person's possession, being property of a person reasonably suspected of corruption or economic crime.

(9) A person who neglects or fails to comply with a requirement under this section is guilty of an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(10) No requirement under this section requires anything to be disclosed that is protected by the privilege of advocates including anything protected by section 134 or 137 of the Evidence Act (Cap. 80).

[Act No. 7 of 2007, Sch., Act No. 18 of 2014, Sch.]

## **29. Search of premises**

(1) The Commission may, with a warrant, enter upon and search any premises for any record, property or other thing reasonably suspected to be in or on the premises and that has not been produced by a person pursuant to a requirement under the foregoing provisions of this Part.

(2) The power conferred by this section is in addition to, and does not limit or restrict, a power conferred by section 23(3) or by any other provision of this Part.

## **30. Admissibility of things produced or found**

Where the notice is directed at a person under investigation or a person who has been charged with an offence of corruption or an economic crime, any statement, record or information, given pursuant to such notice, shall not be given in evidence against such person in any criminal proceedings except where such person is charged with knowingly or recklessly giving false information.

[Act No. 7 of 2007, Sch.]

## **31. Surrender of travel documents**

(1) On the *ex parte* application of the Commission, a court may issue an order requiring a person to surrender his travel documents to the Commission if—

- (a) the person is reasonably suspected of corruption or economic crime; and
- (b) the corruption or economic crime concerned is being investigated.

(2) If a person surrenders his travel documents pursuant to an order under subsection (1), the Commission—

- (a) shall return the documents after the investigation of the corruption or economic crime concerned is completed, if no criminal proceedings are to be instituted; and
- (b) may return the documents, at its discretion, either with or without conditions to ensure the appearance of the person.

(3) A person against whom an order under subsection (1) is made may apply to the court to discharge or vary the order or to order the return of his travel documents and the court may, after hearing the parties, discharge or vary the order, order the return of the travel documents, or dismiss the application.

(4) If a person fails to surrender his travel documents pursuant to an order under subsection (1), the person may be arrested and brought before the court and the court shall, unless the court is satisfied that the person does not have any travel documents, order that the person be detained pending the conclusion of the investigation of the corruption or economic crime concerned.



(5) A person who is detained pursuant to an order under subsection (4) shall be released if—

- (a) he surrenders his travel documents to the Commission;
- (b) he satisfies the court that he does not have any travel documents; or
- (c) the investigation of the corruption or economic crime concerned is completed and the court is satisfied that no criminal proceedings are to be instituted.

(6) A person who is detained pursuant to an order under subsection (4) shall be brought before the court at least every eight days or at such shorter intervals as the court may order, to determine if the person should be released under subsection (5).

### **32. Arrest of persons**

Without prejudice to the generality of section 23(3), the Secretary and an investigator shall have power to arrest any person for and charge them with an offence, and to detain them for the purpose of an investigation, to the like extent as a police officer.

[Act No. 18 of 2014, Sch.]

### **33. Disclosure that may affect investigation**

(1) No person shall, except with leave of the Director or with other lawful excuse, disclose the details of an investigation under this Act, including the identity of anyone being investigated.

(2) A person who contravenes this section is guilty of an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

### **34. Impersonating investigator**

(1) No person other than an investigator shall represent himself to be or act as an investigator.

(2) A person who contravenes this section is guilty of an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

### **35. Investigation report**

(1) Following an investigation the Commission shall report to the Director of Public Prosecutions on the results of the investigation.

(2) The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime.

[Act No. 12 of 2012, Sch.]

### **36. Quarterly reports**

(1) The Commission shall prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions under section 35 and such other statistical information relating to those reports as the Commission considers appropriate.

(2) A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was not accepted.

(3) The Commission shall give a copy of each quarterly report to the Attorney-General.

(4) The Attorney-General shall lay a copy of each quarterly report before the National Assembly.

(5) The Commission shall cause each quarterly report to be published in the *Gazette*.

[Act No. 12 of 2012, Sch.]

### **37. Annual report on prosecutions**

(1) The Director of Public Prosecutions shall prepare an annual report with respect to prosecutions for corruption or economic crime.

(2) The year covered by an annual report shall be the year ending on December 31st.

(3) The annual report for a year shall include a summary of the steps taken, during the year, in each prosecution and the status, at the end of the year, of each prosecution.

(4) The annual report shall also indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation.

(5) The annual report for a year need not include the status of a prosecution that has been finally concluded in a previous year if that status was included in a previous annual report.

(6) The Attorney-General shall lay each annual report before the National Assembly within the first ten sitting days of the National Assembly following the end of the year to which the report relates.

(7) The first annual report following the coming into operation of this section shall cover the period from the coming into operation of this section to the following December 31st.

[Act No. 12 of 2012, Sch.]

## **PART V – OFFENCES**

### **38. Meaning of “agent” and “principal”**

(1) In this Part—

“**agent**” means a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or on behalf of another person;

“**principal**” means a person, whether in the public or private sector, who employs an agent or for whom or on whose behalf an agent acts.

(2) If a person has a power under the Constitution or an Act and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent’s principal, the person shall be deemed, for the purposes

of this Part, to be an agent for the Government and the exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government.

(3) For the purposes of this Part—

- (a) a Cabinet Minister shall be deemed to be an agent for both the Cabinet and the Government; and
- (b) the holder of a prescribed office or position shall be deemed to be an agent for the prescribed principal.

(4) The regulations made under this Act may prescribe offices, positions and principals for the purposes of subsection (3)(b).

**39.** *Deleted by Act No. 47 of 2016, s. 23.*

**40. Secret inducements for advice**

(1) This section applies with respect to a benefit that is an inducement or reward for, or otherwise on account of, the giving of advice to a person.

(2) A person is guilty of an offence if the person—

- (a) receives or solicits, or agrees to receive or solicit, a benefit to which this section applies if the person intends the benefit to be a secret from the person being advised; or
- (b) gives or offers, or agrees to give or offer, a benefit to which this section applies if the person intends the benefit to be a secret from the person being advised.

(3) In this section, “**giving advice**” includes giving information.

**41. Deceiving principal**

(1) An agent who, to the detriment of his principal, makes a statement to his principal that he knows is false or misleading in any material respect is guilty of an offence.

(2) An agent who, to the detriment of his principal, uses, or gives to his principal, a document that he knows contains anything that is false or misleading in any material respect is guilty of an offence.

#### **42. Conflicts of interest**

(1) If an agent has a direct or indirect private interest in a decision that his principal is to make the agent is guilty of an offence if—

- (a) the agent knows or has reason to believe that the principal is unaware of the interest and the agent fails to disclose the interest; and
- (b) the agent votes or participates in the proceedings of his principal in relation to the decision.

(2) A private body may authorize its agent to vote or participate in the proceedings of the private body and the voting or participation of an agent as so authorized is not a contravention of subsection (1).

(3) An agent of a public body who knowingly acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the public body is guilty of an offence.

(4) Subsection (3) does not apply with respect to an employment contract of the agent, or a related or similar contract or agreement or to any prescribed contract, agreement or investment.

#### **43. Improper benefits to trustees for appointments**

(1) This section applies with respect to a benefit that is an inducement or reward for the appointment of a person as a trustee of property or for joining or assisting in such an appointment.

(2) Subject to subsection (3), a person is guilty of an offence if the person—

- (a) receives or solicits, or agrees to receive or solicit, from a trustee of property a benefit to which this section applies; or
- (b) gives or offers, or agrees to give or offer, to a trustee of property a benefit to which this section applies.

(3) Subsection (2) does not apply to anything done with the informed consent of every person beneficially entitled to the property or in accordance with an order of a court.

(4) In this section, “**trustee of property**” includes—

- (a) an executor or administrator appointed to deal with the property;
- (b) a person who, under a power of attorney or a power of appointment, has authority over the property; and
- (c) a person or a member of a committee managing or administering, or appointed or employed to manage or administer, the property on behalf of a person under an infirmity or incapacity of mind.

**44. Bid rigging, etc.**

(1) This section applies with respect to a benefit that is an inducement or reward for—

- (a) refraining from submitting a tender, proposal, quotation or bid;
- (b) withdrawing or changing a tender, proposal, quotation or bid; or
- (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions.

(2) A person is guilty of an offence if the person—

- (a) receives or solicits or agrees to receive or solicit a benefit to which this section applies; or
- (b) gives or offers or agrees to give or offer a benefit to which this section applies.

**45. Protection of public property and revenue, etc.**

(1) A person is guilty of an offence if the person fraudulently or otherwise unlawfully—

- (a) acquires public property or a public service or benefit;
- (b) mortgages, charges or disposes of any public property;
- (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or
- (d) fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges.

(2) An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person—

- (a) fraudulently makes payment or excessive payment from public revenues for—
  - (i) sub-standard or defective goods;
  - (ii) goods not supplied or not supplied in full; or
  - (iii) services not rendered or not adequately rendered,
- (b) wilfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or
- (c) engages in a project without prior planning.

(3) In this section, “**public property**” means real or personal property, including money, of a public body or under the control of, or consigned or due to, a public body.

**46. Abuse of office**

A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.

**47. Dealing with suspect property**

(1) A person who deals with property that he believes or has reason to believe was acquired in the course of or as a result of corrupt conduct is guilty of an offence.

(2) For the purposes of this section, a person deals with property if the person—

- (a) holds, receives, conceals or uses the property or causes the property to be used; or
- (b) enters into a transaction in relation to the property or causes such a transaction to be entered into.

(3) In this section, “**corrupt conduct**” means—

- (a) conduct constituting corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which—
  - (i) at the time, constituted an offence; and
  - (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.

**47A. Attempts, conspiracies, etc.**

(1) A person who attempts to commit an offence involving corruption or an economic crime is guilty of an offence.

(2) For the purposes of this section, a person attempts to commit an offence of corruption or an economic crime if the person, with the intention of committing the offence, does or omits to do something designed to its fulfilment but does not fulfil the intention to such an extent as to commit the offence.

(3) A person who conspires with another to commit an offence of corruption or economic crimes is guilty of an offence.

(4) A person who incites another to do any act or make any omission of such a nature that, if that act were done or the omission were made, an offence of corruption or an economic crime would thereby be committed, is guilty of an offence.

[Act No. 7 of 2007, Sch.]

**48. Penalty for offence under this Part**

(1) A person convicted of an offence under this Part shall be liable to—

- (a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and
- (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(2) The mandatory fine referred to in subsection (1)(b) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);
- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

#### **49. Custom not a defence**

In prosecution of an offence under this Part, it shall be no defence that the receiving, soliciting, giving or offering of any benefit is customary in any business, undertaking, office, profession or calling.

#### **50. Impossibility, no intention, etc., not a defence**

In a prosecution of an offence under this Part that involves a benefit that is an inducement or reward for doing an act or making an omission, it shall not be a defence—

- (a) that the act or omission was not within a person's power or that the person did not intend to do the act or make the omission; or
- (b) that the act or omission did not occur.

### **PART VI – COMPENSATION AND RECOVERY OF IMPROPER BENEFITS**

#### **51. Liability for compensation**

A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered.

#### **52. Liability for improper benefits**

A person who receives a benefit the receipt of which would constitute an offence under section 39, 40 or 43 is liable, for the value of the benefit, to the following persons—

- (a) if the receipt constitutes an offence under section 39, to the agent's principal;
- (b) if the receipt constitutes an offence under section 40, to the person advised; or
- (c) if the receipt constitutes an offence under section 43, to the persons beneficially entitled to the property.

#### **53. Liability – miscellaneous provisions**

(1) A person liable for an amount under section 51 or 52 shall also be liable to pay interest, at the prescribed rate, on the amount payable.

(2) Nothing in section 51 or 52 affects any other liability a person may have.

(3) An amount for which a person is liable under section 51 or 52 to a public body may be recovered by the public body or by the Commission on its behalf.

(4) For greater certainty, nothing in the Government Proceedings Act (Cap. 40) prevents the Commission from instituting civil proceedings to recover amounts under subsection (3).

(5) A person is not entitled to any amount under section 51 or 52 in relation to a particular instance of corruption or economic crime if that person was a party to the corruption or economic crime or that person did a related act that also constituted corruption or economic crime.

#### **54. Compensation orders on conviction**

(1) A court that convicts a person of any corruption or economic crime shall, at the time of conviction or on subsequent application, order the person—

- (a) to pay any amount the person may be liable for under section 51 or 52; and
- (b) to give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption or economic crime or an amount equivalent to the value of that property.

(2) If the rightful owner referred to in subsection (1)(b) cannot be determined or if there is no rightful owner, the court shall order that the property or equivalent amount be forfeited to the Government.

(3) In making an order under this section, a court may quantify any amount or may determine how such amount is to be quantified.

(4) An order under this section may be enforced by the person in whose favour it is made as though it were an order made in a civil proceeding.

#### **55. Forfeiture of unexplained assets**

(1) In this section, “**corrupt conduct**” means—

- (a) conduct that constitutes corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which—
  - (i) at the time, constituted an offence; and
  - (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.

(2) The Commission may commence proceedings under this section against a person if—

- (a) after an investigation, the Commission is satisfied that the person has unexplained assets; and
- (b) the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.



(3) Proceedings under this section shall be commenced in the High Court by way of originating summons.

(4) In proceedings under this section—

- (a) the Commission shall adduce evidence that the person has unexplained assets; and
- (b) the person whose assets are in question shall be afforded the opportunity to cross-examine any witness called and to challenge any evidence adduced by the Commission and, subject to this section, shall have and may exercise the rights usually afforded to a defendant in civil proceedings.

(5) If after the Commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.

(6) If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct.

(7) For the purposes of proceedings under this section, the assets of the person whose assets are in question shall be deemed to include any assets of another person that the court finds—

- (a) are held in trust for the person whose assets are in question or otherwise on his behalf; or
- (b) were acquired from the person whose assets are in question as a gift or loan without adequate consideration.

(8) The record of proceedings under this section shall be admissible in evidence in any other proceedings, including any prosecution for corruption or economic crime.

(9) This section shall apply retroactively.

[Act No. 7 of 2007, Sch.]

## **56. Order preserving suspect property, etc.**

(1) On an *ex parte* application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.

(2) An order under this section may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.

(3) An order under this section shall have effect for six months and may be extended by the court on the application of the Commission.

(4) A person served with an order under this section may, within fifteen days after being served, apply to the court to discharge or vary the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.

(5) The court may discharge or vary an order under subsection (4) only if the court is satisfied, on the balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct.

(6) A person who is served with an order under this section and who contravenes it is guilty of an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both.

(7) In this section, “**corrupt conduct**” means—

- (a) conduct that constitutes corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which—
  - (i) at the time, constituted an offence; and
  - (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.

[Act No. 47 of 2016, s. 24.]

#### **56A. Appointment of receiver**

(1) The Commission may, at any time with leave of the court, appoint a receiver for such property as is suspected by the Commission to have been acquired through corrupt conduct.

(2) The appointment of a receiver under subsection (1) above shall be in writing signed by the Director or Assistant Director.

(3) The receiver shall have powers of management, control and possession of the property for which he is appointed.

(4) The Commission or the receiver shall, at the time of the appointment or soon thereafter, serve a notice on the person who has or who appears to have custody or control of the property, and, where the property is required under any written law to be registered, a similar notice shall be served on the respective registrar:

Provided that where the property is situated outside Kenya, the notice shall not be necessary but the Commission shall have the power to liaise with foreign governments, government departments and international agencies for the confiscation, management, control and repatriation of the property.

(5) A person served with a notice under the foregoing subsection shall not, except by authority of a court order, deal with the property in any manner inconsistent with the instructions of the receiver.

(6) A person who contravenes subsection (5) shall be guilty of an offence and liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both for a first offence, and to imprisonment for a term not exceeding ten years without the option of a fine for a subsequent offence in respect of the same property.

(7) For avoidance of doubt, a receiver may be appointed under this section in respect of any kind of property whether tangible or intangible, movable or immovable, and including buildings, income, debts, bank deposits, business concerns, stocks and other properties.

(8) The receiver shall keep proper books of account and give quarterly reports to the Commission, and may pay the costs of receivership out of the property for which he has been appointed.

(9) A person aggrieved by the appointment of a receiver under this section may request the Commission in writing to set aside the appointment in return for an offer of deposit of some reasonable security, or he may apply to the High Court for setting aside or variation of the appointment on the ground that—

- (a) he has offered to the Commission a reasonable security which has not been accepted by the Commission; or
- (b) he has in his possession evidence to show that, on a balance of probabilities, he acquired the property otherwise than through crime or civil wrongs.

(10) An application to the High Court under subsection (9) shall be heard *inter partes*, and the Commission shall be entitled to cross-examine the applicant and to call evidence in rebuttal.

[Act No. 7 of 2007, Sch.]

#### **56B. Out of court settlement**

(1) In any matter where the Commission is mandated by this Act or any other law to institute civil proceedings or applications, it shall be lawful for the Commission to issue a notice or letter of demand to the person intended to be sued, and may, in such notice or letter, inform the person about the claim against him and further inform him that he could settle the claim within a specified time before the filing of court proceedings.

(2) The Commission may negotiate and enter a settlement with any person against whom the Commission intends to bring, or has actually brought, a civil claim or application in court.

(3) The Commission may tender an undertaking in writing not to institute criminal proceedings against a person who—

- (a) has given a full and true disclosure of all material facts relating to past corrupt conduct and economic crime by himself or others; and
- (b) has voluntarily paid, deposited or refunded all property he acquired through corruption or economic crime; and
- (c) has paid for all losses occasioned by his corruption conduct to public property.

(4) A settlement or undertaking under this section shall be registered in court.

[Act No. 7 of 2007, Sch.]

#### **56C. Recovery of funds and other assets**

(1) Any funds recovered by the Commission shall be paid into the Consolidated Fund.

(2) Notwithstanding any provision in this Act or any other written law, any asset or property, whether movable or immovable, recovered either in the course of, or upon conclusion of investigations, or upon commencement of court action or proceedings, whether such proceedings are of a civil or criminal nature or upon conclusion of such proceedings, shall be surrendered to the Permanent Secretary to the Treasury.

[Act No. 10 of 2010, s. 78.]

## PART VII – EVIDENCE

### 57. Unexplained assets, etc., as corroboration

(1) Unexplained assets may be taken by the court as corroboration that a person accused of corruption or economic crime received a benefit.

(2) For the purposes of this section, the assets of an accused person shall be deemed to include any assets of another person that the court finds—

- (a) are held in trust for the accused person or otherwise for or on his behalf; or
- (b) were acquired from the accused person without adequate consideration.

### 58. Presumption of corruption if act shown

If a person is accused of an offence under Part V an element of which is that an act was done corruptly and the accused person is proved to have done that act the person shall be presumed to have done that act corruptly unless the contrary is proved.

### 59. Certificates to show value of property, etc.

(1) In a prosecution for corruption or economic crime or a proceeding under this Act, a certificate of a valuation officer as to the value of a benefit or property is admissible and is proof of that value, unless the contrary is proved.

(2) A court shall presume, in the absence of evidence to the contrary, that a certificate purporting to be the certificate of a valuation officer is such a certificate.

(3) In this section, “**valuation officer**” means a person appointed, employed or authorised by the Commission or the Government to value property and whose appointment, employment or authorisation is published by notice in the *Gazette*.

### 60. Rule, etc., relating to accomplices

For the purposes of any rule or practice requiring the evidence of an accomplice to be corroborated, a person shall not be considered an accomplice of a person accused of an offence under Part V only because—

- (a) the person received, solicited or agreed to receive or solicit a benefit from the accused person; or
- (b) the person gave, offered or agreed to give or offer a benefit to the accused person.

**61. Certificates to show office and compensation**

(1) In a prosecution for corruption or economic crime or a proceeding under this Act, a certificate of an officer of a body as to a person's position with the body or the person's compensation is admissible and is proof of that position or compensation in the absence of evidence to the contrary.

(2) A court shall presume, in the absence of evidence to the contrary, that a certificate purporting to be the certificate of an officer of a body is such a certificate.

**PART VIIA – EXECUTION****61A. Execution against the Commission**

Notwithstanding anything to the contrary in any law, where judgment or an order has been given against the Commission for payment of money by way of damages or otherwise—

- (a) no execution or attachment in the nature thereof shall be issued against the Commission or against the assets, debts or bank deposits of the Commission;
- (b) the Director shall, except if there is an appeal or application pending against the judgment or order, cause to be paid out of the funds of the Commission provided expressly for such purposes in the annual estimates, such amounts as may be payable under the decree to the person entitled thereto;
- (c) no property of the Commission shall be seized or taken by any person having, by law, power to attach or distrain property without the previous written permission of the Director.

[Act No. 7 of 2007, Sch.]

**PART VIII – MISCELLANEOUS****62. Suspension, if charged with corruption or economic crime**

(1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case:

Provided that the case shall be determined within twenty-four months.

(2) A suspended public officer who is on half pay shall continue to receive the full amount of any allowances.

(3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.

(4) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.

(5) The following shall apply with respect to a charge in proceedings instituted otherwise than by or under the direction of the Attorney-General—

- (a) this section does not apply to the charge unless permission is given by the court or the Attorney-General to prosecute or the proceedings are taken over by the Attorney-General; and

- (b) if permission is given or the proceedings are taken over, the date of the charge shall be deemed, for the purposes of this section, to be the date when the permission is given or the proceedings are taken over.

(6) This section does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.

(7) This section does not apply with respect to a charge laid before this Act came into operation.

[Act No. 18 of 2014, Sch.]

### **63. Suspension, etc., if convicted of corruption or economic crime**

(1) A public officer who is convicted of corruption or economic crime shall be suspended without pay with effect from the date of the conviction pending the outcome of any appeals.

(2) The public officer ceases to be suspended if the conviction is overturned on appeal.

(3) The public officer shall be dismissed if—

- (a) the time period for appealing against the conviction expires without the conviction being appealed; or
- (b) the conviction is upheld on appeal.

(4) This section does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.

(5) This section does not apply with respect to a conviction that occurred before this Act came into operation.

### **64. Disqualification if convicted of corruption or economic crime**

(1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.

(2) This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.

(3) This section does not apply with respect to a conviction that occurred before this Act came into operation.

(4) At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the *Gazette*.

### **65. Protection of informers**

(1) No action or proceeding, including a disciplinary action, may be instituted or maintained against a person in respect of—

- (a) assistance given by the person to the Commission or an investigator; or
- (b) a disclosure of information made by the person to the Commission or an investigator.

(2) Subsection (1) does not apply with respect to a statement made by a person who did not believe it to be true.

(3) In a prosecution for corruption or economic crime or a proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of, a person who assisted or disclosed information to the Commission or an investigator.

(4) In a prosecution for corruption or economic crime or a proceeding under this Act, the Court shall ensure that information that identifies or might lead to the identification of a person who assisted or disclosed information to the Commission or an investigator is removed or concealed from any documents to be produced or inspected in connection with the proceeding.

(5) Subsections (3) and (4) shall not apply to the extent determined by the court to be necessary to ensure that justice is fully done.

#### **66. Obstructing persons under this Act, etc.**

(1) No person shall—

- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten, a person acting under this Act;
- (b) deceive or knowingly mislead the Commission or a person acting under this Act;
- (c) destroy, alter, conceal or remove documents, records or evidence that the person believes, or has grounds to believe, may be relevant to an investigation or proceeding under this Act; or
- (d) make false accusations to the Commission or a person acting under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

#### **67. Conduct outside Kenya – offences**

Conduct by a citizen of Kenya that takes place outside Kenya constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Kenya.

#### **68. Regulations**

The Minister may make regulations generally for the better carrying out of the provision of this Act.

### **PART IX – REPEAL, TRANSITION AND AMENDMENTS**

#### **69. Interpretation**

In this Part—

“**former Advisory Board**” means the Advisory Board under the repealed Act;

**“repealed Act”** means the Prevention of Corruption Act (Cap. 65) repealed by section 70.

#### **70. Repeal of Cap. 65**

The Prevention of Corruption Act (Cap. 65) is repealed.

#### **71. Offences under repealed Act**

(1) This section applies with respect to offences or suspected offences under the repealed Act committed before this Act came into operation.

(2) This Act, other than Part V, applies, with any necessary modifications, with respect to offences described in subsection (1) and, for that purpose, such offences shall be deemed to be corruption or economic crimes.

(3) For greater certainty, this section—

- (a) does not apply with respect to any act or omission that, at the time it took place, was not an offence; and
- (b) is not to be construed as authorising the imposition of a penalty that, under section 77(4) of the Constitution, could not be imposed.

#### **72. Temporary Director, etc.**

(1) The person who, immediately before the establishment of the Commission, was the head of the anti-corruption unit of the Kenya Police Force shall become the temporary Director of the Commission upon the establishment of the Commission.

(2) The temporary Director under subsection (1) shall cease to be the temporary Director upon the appointment of a Director under this Act.

(3) For greater certainty, the temporary Director under subsection (1) shall have and may exercise and perform all the powers and functions of the Director until the Director is appointed and may participate in any deliberations of the Advisory Board for the purposes of section 8(3) (now deleted).

#### **73. Transfer from anti-corruption unit of the Kenya Police Force**

(1) The conduct of all ongoing operations of the anti-corruption unit of the Kenya Police Force, including all ongoing investigations, shall, on the commencement of this Act, be transferred to the Commission.

(2) All assets of the anti-corruption unit of the Kenya Police Force shall, on the commencement of this Act, become assets of the Commission.

(3) Without limiting the generality of subsection (2), the assets that become assets of the Commission shall include all files and documents, including electronic documents, associated with ongoing or past operations of the anti-corruption unit of the Kenya Police Force, including ongoing or past investigations.

(4) The Kenya Police Force shall render such assistance to the Commission as the Commission requests to facilitate the transfer, under this section, of the operations and assets of the anti-corruption unit of the Kenya Police Force to the Commission.



(5) For greater certainty, this section does not result in the transfer of any staff of the anti-corruption unit of the Kenya Police Force to the Commission but the Commission may receive such staff as it considers advisable on secondment.

#### **74. Amendment of section 42 of Cap. 22**

Section 42 of the Limitations of Actions Act is amended by inserting the word “or” at the end of paragraph (h) and inserting the following new paragraph immediately after paragraph (h)—

- (i) a proceeding to recover an amount for which a person is liable under section 51 or 52 of the Anti-Corruption and Economic Crimes Act, 2003 or a proceeding under section 55 or 56 of that Act.

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### **FIRST SCHEDULE**

[Section 8, Act No. 7 of 2007, Sch.]

#### **PROVISIONS RELATING TO THE STAFF OF THE COMMISSION**

##### **1. Qualifications for appointment as Director or Assistant Director**

(1) To be appointed as the Director or as an Assistant Director, a person must satisfy the following qualifications—

- (a) the person must be knowledgeable about or experienced in at least one of the following—
  - (i) law;
  - (ii) public administration;
  - (iii) accounting and financial matters; or
  - (iv) fraud investigation; and
- (b) the person must be of outstanding honesty and integrity.

(2) The Advisory Board shall not recommend a person who is not qualified under this paragraph.

##### **2. Vacancies, acting Assistant**

(1) If the office of the Director or an Assistant Director becomes vacant, the Advisory Board shall, within three months, recommend a person to be appointed to fill the vacancy.

(2) During the illness or absence of an Assistant Director or a vacancy in the office of an Assistant Director, the Advisory Board may appoint a member of the staff of the Commission as an acting Assistant Director.

(3) The Advisory Board may at any time revoke an appointment under subparagraph (2) and appoint another member of staff of the Commission as acting Assistant Director.

**3. Term of office of Director or Assistant Director**

(1) The term of office of the Director or an Assistant Director shall be five years:

Provided that an Assistant Director may be appointed for a term of four years to avoid having the Assistant Director's term expire on or around the time the Director's term expires.

(2) A person who has held office as Director or Assistant Director may be reappointed, but may not serve as the Director for more than two terms or as an Assistant Director for more than two terms.

(3) A director shall, unless his office becomes vacant by reason of his death, resignation, or ceasing to hold office under paragraph 5, continue in office until he is reappointed or replaced by a new director appointed under the Act.

[Act No. 7 of 2007, Sch.]

**4. Resignation of Director or Assistant Director**

(1) The Director or an Assistant Director may resign by a written resignation addressed to the President.

(2) A resignation is effective upon being received by the President or by a person authorized by the President to receive it.

**5. Removal of Director or Assistant Director**

(1) The appointment of the Director or an Assistant Director may be terminated only in accordance with this paragraph.

(2) The President, on the recommendation of the Advisory Board, may terminate a person's appointment as the Director or an Assistant Director if the person—

- (a) contravenes paragraph 6(1) of this Schedule;
- (b) is adjudged bankrupt; or
- (c) is convicted of an offence under the Penal Code or this Act or an offence involving dishonesty.

(3) The President may terminate the appointment of the Director or Assistant Director if a tribunal under this paragraph finds that the Director or Assistant Director—

- (a) is unable to perform the functions of his office by reason of a mental or physical infirmity; or
- (b) was involved in a corrupt transaction.

(4) The Advisory Board may request the Chief Justice to appoint a tribunal if the Advisory Board is of the view that the Director or an Assistant Director—

- (a) may be unable to perform the functions of his office by reason of a mental or physical infirmity; or
- (b) may have been involved in a corrupt transaction.

(5) The Advisory Board shall give a copy of the request under subparagraph (4) to the President at the same time as the request is made to the Chief Justice and the President may suspend the Director or Assistant Director pending the final resolution of the matter.

(6) Upon receiving a request under subparagraph (4), the Chief Justice shall forthwith appoint a tribunal of three members, one of whom the Chief Justice shall designate as the chairman.

(7) Each member of the tribunal shall be a person qualified to be appointed as a judge of the High Court or the Court of Appeal.

(8) The tribunal shall conduct an inquiry in accordance with such procedures as it may determine.

(9) The procedures of the tribunal shall be consistent with the rules of natural justice.

(10) Within thirty days after concluding its inquiry, the tribunal shall—

- (a) publicly announce its finding and reasons; and
- (b) submit a report to the President.

#### **6. Restrictions on activities of staff**

(1) After being appointed, no staff of the Commission, including the Director or an Assistant Director, shall—

- (a) be employed in any other work or business;
- (b) hold any other public office; or
- (c) take any active part in the affairs of any political party or support any candidate for election to a public office.

(2) A person who holds a public office and is seconded to the Commission does not contravene subparagraph (1) only by virtue of continuing to hold that public office as long as the person performs no duties of that public office while seconded to the Commission.

#### **7. Disciplinary code**

(1) The Director shall issue a Code for the Commission providing for the discipline of its staff.

(2) The Code may provide for investigations and for the determination, including by a hearing, of matters that may be in dispute.

(3) The Code may provide for penalties up to and including dismissal and may include provisions for the recovery of costs arising from loss of or damage to property of the Commission.

#### **8. Removal of other staff**

In addition to any other ground on which, under this Act, a member of staff of the Commission (not being the Director or an Assistant Director), may be removed from office, the member may be so removed by the Director on the ground that the member has breached the Code issued under paragraph 7 of this Schedule or on the ground that the Director no longer has confidence in the member's integrity:

Provided that no member of staff shall be removed from office under this paragraph unless he has first been given a reasonable opportunity to show cause why he should not be so removed.

#### **9. Protection from personal liability**

(1) No action or proceeding for compensation or damages shall be brought against the Director, an Assistant Director, an investigator or any staff of the Commission in respect of anything done or omitted in good faith under this Act.

(2) This paragraph shall not relieve the Commission of any liability.

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### **SECOND SCHEDULE**

[Section 22, Act No. 7 of 2007, Sch.]

#### **PROVISIONS RELATING TO MEMBERS OF THE ADVISORY BOARD**

##### **1. Appointment of nominated members**

(1) This paragraph provides for the appointment of a member of the Advisory Board nominated by a body under section 16(2)(a).

(2) The nominating body shall submit the names of two nominees to the Minister.

(3) The Minister shall submit the names of the nominees to the National Assembly for approval within seven sitting days after receiving them.

(4) The National Assembly shall, within fourteen days after it first meets after receiving the names of the nominees—

- (a) consider the nominees and either approve one of the nominees or reject both of them; and
- (b) notify the Minister as to its approval or rejection under subparagraph (a).

(5) If the National Assembly approves a nominee, the Minister shall, within fourteen days after receiving the notification of the National Assembly, forward the name of the nominee to the President and the President shall, within fourteen days after receiving the name, appoint the nominee as a member of the Advisory Board.

(6) If the National Assembly rejects both nominees submitted by the nominating body, the Minister shall, within fourteen days after receiving the notification of the National Assembly, request the nominating body to submit a new nominee to the Minister and subparagraphs (3), (4) and (5) and this subparagraph apply with necessary modifications with respect to that new nominee.

(7) In nominating and approving persons to be members of the Advisory Board, the nominating body and the National Assembly shall have regard to—

- (a) the honesty and integrity of the person and the person's knowledge and experience; and
- (b) the importance of representing Kenya's diversity on the Advisory Board.

(8) Within seven days after any vacancy arises in the membership of the Advisory Board, the Minister shall request the nominating body to submit nominees under subparagraph (2) and the nominating body shall do so within twenty-one days after being requested to do so.

(9) The following shall apply with respect to the initial appointment of the Advisory Board following the commencement of this Act—

- (a) each nominating body shall submit its initial nominees within twenty-one days after the commencement of this Act;
- (b) the Minister shall wait until sufficient nominees are approved to form a quorum before submitting the names of the approved nominees under subparagraph (5);
- (c) within fifteen days after a sufficient number of the members of the Advisory Board are appointed to form a quorum, the Minister shall call a meeting of the Advisory Board for the purposes of nominating the initial Chairman and Vice-chairman.

## **2. Term of members**

(1) The term of office of each nominated member of the Advisory Board shall be five years.

(2) A person may not serve more than two terms as a member of the Advisory Board.

(3) A member of the Advisory Board shall, unless his office becomes vacant by reason of his death, resignation or ceasing to hold office by virtue of paragraph 4, continue in office until he is reappointed or replaced by another member appointed under the Act.

[Act No. 7 of 2007, Sch.]

## **3. Resignation**

(1) A nominated member of the Advisory Board may resign by a written resignation addressed to the President.

(2) A resignation is effective upon being received by the President or by a person authorized by the President to receive it.

## **4. Termination of appointment**

The President, on the recommendation of the Advisory Board, may terminate a person's appointment as a member of the Advisory Board only if the person—

- (a) is unable to perform the functions of his office by reason of a mental, or physical infirmity;
- (b) is adjudged bankrupt;

- (c) is convicted of an offence under the Penal Code (Cap. 63) or this Act or an offence involving dishonesty; or
- (d) is absent from three consecutive meetings of the Advisory Board without reasonable excuse.

#### **5. Disclosure of personal interest**

(1) A member of the Advisory Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Advisory Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Advisory Board.

(2) A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Advisory Board and the member shall not be present while that matter is being dealt with by the Advisory Board and shall not take part in any deliberations or vote relating to the matter.

#### **6. Allowances**

The Commission shall pay the members of the Advisory Board such allowances and expenses as are determined by the Minister in charge of finance in consultation with a committee of the National Assembly designated by the National Assembly for that purpose.

#### **7. Protection from personal liability**

(1) No action or proceeding for compensation or damages shall be brought against a member of the Advisory Board or any other person authorized by the Advisory Board, in respect of anything done or omitted in good faith under this Act.

(2) This paragraph shall not relieve the Advisory Board of any liability.

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### **THIRD SCHEDULE**

[Section 21.]

#### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE ADVISORY BOARD**

##### **1. Meetings**

(1) The Advisory Board shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) Meetings shall be convened by the Chairman, or in his absence by the Vice-chairman.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairman, or in his absence by the Vice-chairman or in both their absences, by a person elected by the Advisory Board at the meeting for that purpose.

## **2. Voting**

A decision of the Advisory Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

## **3. Minutes**

Minutes of all meetings shall be kept and entered in books kept for that purpose.

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