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THE CONFLICT OF INTEREST BILL, 2023

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THE CONFLICT OF INTEREST BILL, 2023

A Bill for

AN ACT of Parliament to provide for the management and regulation of conflict of interest and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Conflict of Interest Act, 2023 and shall come into force on such date as the Attorney-General may, by notice in the Gazette, appoint. Short title and commencement.

2. In this Act, unless the context otherwise requires— Interpretation.

“accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.

“Commission” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011; No. 22 of 2011.

“complimentary treatment” means a treat offered free of charge as a favour or out of courtesy by a person who has significant official dealings with a public entity and includes offers for travel, holiday, hospitality, training, scholarship or medical treatment;

“family” means—

- (a) the spouse, common-law partner, dependent child or parent of a public officer;
- (b) a dependent child of the spouse or common-law partner of a public officer; or
- (c) a parent of the spouse or common law partner of a public officer;

“gainful employment” means work that a person pursues and performs for money or other form of compensation or remuneration;

“official duty” means any task that a public officer is mandated to perform within the specific scope of his employment as defined by a contract of employment, an Act of Parliament or the Constitution;

“private interest” means a personal benefit, privilege, exemption or advantage that a public officer or a person affiliated to a public officer may gain from the office that the public officer holds and which may influence the judgement of a public officer in the exercise of a public duty, but does not include interest in a decision or matter that—

- (a) is of general application;
- (b) affects a public officer as a member of a broad class of persons; or
- (c) concerns the remuneration or benefits received by virtue of being a public officer;

“public officer” means any person who renders government services, whether appointed or elected, full time or part time or permanent or temporary, and includes a state officer and a member, employee, consultant or volunteer of a reporting entity;

“relative” means a person who is related to a public officer by birth, marriage, common law partnership, adoption or affinity and includes a public officer’s father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, step-mother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the public officer;

“registrable interests” means the interests set out in the Second Schedule;

“reporting authority” in relation to a public officer, means an office or body that is responsible for a public officer for the purposes of this Act and includes an accounting officer, a person who exercises executive control over the resources of the entity or any office or entity exercising a function delegated by the Commission;

“reporting entity” means—

- (a) a state organ;
- (b) the national government or any organ or department of the national government;

- (c) a county government or any organ or department of a county government;
- (d) a state corporation within the meaning of State Corporations Act;
- (e) a public school within the meaning of the Basic Education Act, 2013; Cap. 446.
- (f) a public university within the meaning of the Universities Act, 2012; No. 14 of 2013.
- (g) a company owned by the National Government or a county government; No. 42 of 2012
- (h) a body that uses public assets in any form of contractual undertakings including public private partnerships; No. 17 of 2015.
- (i) a company in which the national or county government has controlling shares in accordance with section 125 of the Companies Act, 2015;
- (j) a college or other educational institution maintained or assisted out of public funds;
- (k) an entity which renders a service involving the collection or administration of a levy, fee or funds authorized by legislation;
- (l) any entity that uses public money in the delivery of government programmes or services, whether for profit or not;

“significant official dealing” means an engagement with an entity by a public officer at a level which, in ordinary circumstances, and taking into account the totality of the circumstances, would be construed as capable of influencing the decision of the public officer in relation to the entity, including—

- (a) engagement as an employee or agent of an entity;
- (b) undertaking a consultancy for or on behalf of an entity;
- (c) rendering of advice to an entity, whether directly or indirectly, and whether formally requested or not;

(d) any dealing with an entity in a contractual relationship for supply of goods, services or works; or

(e) any engagement where the public officer exercises regulatory or oversight functions over the affairs of the entity, in whatever form.

“undeclared asset” means any asset that is not disclosed in the prescribed manner in any declaration year;

“unexplained asset” has the meaning assigned to it in the Anti-Corruption and Economic Crimes Act, 2003; and

No. 3 of 2003

“windfall gain” includes unexpected income which may result from inheritance, lottery prizes, gambling winnings, payroll bonuses, proceeds from insurance claims, settlement from lawsuits, discoveries from treasure hunting or bounty rewards.

3. (1) The object of this Act is to provide for the management of conflict of interest in the discharge of official duties.

Objects of the Act.

(2) Without prejudice to the generality of sub section (1), the objects of this Act are to—

(a) promote objectivity and impartiality in official decision making;

(b) ensure that the integrity of decision makers is not compromised by private interests;

(c) enhance public confidence in the delivery of public services;

(d) provide a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest; and

(e) provide an institutional framework for the management of conflict of interest.

4. This Act shall apply to all reporting entities and public officers.

Application of the Act.

PART II— ADMINISTRATION

5. This Act shall be administered by the Ethics and Anti-Corruption Commission.

Administration of this Act.

6. The functions of the Commission under this Act shall be to—

Functions of the Commission.

- (a) oversee the management of conflict of interest for all public officers;
- (b) develop an effective system for reporting violation of this Act;
- (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
- (d) receive and process requests related to the management of conflict of interest;
- (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
- (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
- (g) conduct public awareness on the management of conflict of interest;
- (h) analyse, seek for clarification and verify conflict of interest disclosures; and
- (i) institute proceedings for forfeiture of undeclared or unexplained assets.

7. The Commission shall, in the performance of its functions under this Act, have the power to—

Powers of the Commission.

- (a) summon witnesses and require them to—
 - (i) give evidence, orally or in writing, on oath or on affirmation; and
 - (ii) produce any evidence or exhibits that the Commission considers necessary;
- (b) request for and obtain professional assistance or advice from any person or organization as it considers appropriate;
- (c) delegate to another person or body, by notice in the *Gazette*, any of its powers or functions under

this Act in respect to classes of public officers specified by the Commission and that person or body shall be deemed to be responsible for the administration and management of conflict of interest; and

- (d) cooperate and collaborate with other public entities or agencies, any foreign governments and international or regional organizations in the management of conflict of interest and enforcement of this Act.

PART III—CONFLICT OF INTEREST

8. A public officer is in conflict of interest if the public officer—

Conflict of interest.

- (a) exercises an official power, duty or function to further his private interests or the private interests of another person or of his family, relative or associate;
- (b) is in a situation where the private interests of the public officer can reasonably be perceived to impair or influence the public officer's ability to act objectively in the performance of an official duty; or
- (c) has private interests that could conflict with the duties of the public officer in future.

9. A public officer shall—

Obligation to avoid conflict of interest.

- (a) take reasonable steps to avoid any real, apparent or potential conflict of interest in connection with the official duties of the public officer; and
- (b) disclose details of any private interest of the public officer that affects the official duties of the public officer.

10. (1) A public officer shall not make a decision or participate in making a decision relating to the exercise of an official power or the performance of a duty or function if the public officer knows or reasonably should know that, in the making of the decision, the officer would be in conflict of interest.

Conflict of interest in decision making.

(2) A person who contravenes subsection (1) commits an offence.

11. (1) Subject to the Constitution or any other relevant written law a member of Parliament or a member of a county assembly shall declare any direct pecuniary interest or benefit of whatever nature in any—

Participation in proceedings before Parliament or county assembly.

- (a) debate or proceeding in the relevant House of Parliament or county assembly, as the case may be;
- (b) debate or proceeding in any committee of the relevant House of Parliament or county assembly, as the case may be; or
- (c) transaction or communication which the member may have with another person or other members of the relevant House of Parliament or county assembly, as the case may be.

(2) A Member of Parliament or a member of a county assembly who makes a declaration under subsection (1) shall not—

- (a) participate in any deliberations in respect of which the member has made the declaration; or
- (b) use any information obtained by the member in the discharge of the member's constitutional role to advance the member's private interests.

(3) A person who contravenes subsection (1) or (2) commits an offence.

12. (1) A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or advantage beyond what is allowed by law or written policy.

Preferential treatment.

(2) A person who contravenes subsection (1) commits an offence.

13. (1) A public officer shall not, directly or indirectly, use or allow any person under the officer's authority to use any information that is obtained by the person in the course of performing official duties and is not available to the public to improperly further or seek to further the interest of the officer or the interests of another person.

Misuse of official information.

(2) A person who contravenes subsection (1) commits an offence.

14. (1) A public officer shall not use his position to influence the decision of another person or another public officer so as to further his private interests or the private interests of another person.

Undue influence.

(2) A person who contravenes subsection (1) commits an offence.

15. (1) A public officer shall—

Offers of outside employment.

(a) not allow himself to be influenced in the exercise of an official power or performance of a duty or function by plans for or any offer of outside employment; and

(b) disclose in writing to the reporting authority any offer of outside employment that could place the officer in a situation of conflict of interest, within seven days of receiving the offer.

(2) A public officer who accepts an offer of outside employment shall, within seven days of acceptance, disclose his acceptance of the offer in writing to the Commission and to the reporting authority.

(3) For purposes of this section “offer of outside employment” means a formal proposal made to a public officer to work for or privately do business with an entity which has official dealings with the reporting entity in which the public officer is serving.

(4) A person who contravenes subsection (1) or (2) commits an offence.

16. (1) A public officer, a member of the officer’s family or a relative of the public officer shall not accept or request a gift or a favour from a person who—

Gifts and other benefits.

(a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer’s duties;

(b) carries on regulated activities with respect to which the public officer’s organisation has a role; or

(c) has a contractual or similar relationship with the public officer’s organisation.

(2) Notwithstanding subsection (1), a public officer may receive a gift given in an official capacity, provided that the gift—

- (a) is received as a normal expression of courtesy or protocol;
- (b) is within the customary standards that normally accompany the public officer's position;
- (c) is not monetary; or
- (d) does not exceed such value as may be prescribed.

(3) Subject to subsection (2), if a public officer, a member of the public officer's family or a relative of the public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.

(4) A person who contravenes subsection (1) or (3) commits an offence.

17. Every reporting authority shall maintain a register of—

Register of gifts.

- (a) gifts received by public officers serving in the reporting entity;
- (b) gifts given by the reporting entity to public officers; and
- (c) donations received by the reporting entity for a specific cause.

18.(1) A public officer, member of the officer's family or a relative of the public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his official capacity or in exceptional circumstances.

Complimentary treatment.

(2) Where a public officer, member of the officer's family or a relative of the public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary

treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—

- (a) the nature of the complimentary treatment accepted;
- (b) the donor; and
- (c) the circumstances under which the complimentary treatment was accepted.

(3) A person who contravenes sub section (1) or (2) commits an offence.

19. (1) A public officer shall not be a party to or beneficiary of a contract for the supply of goods, works or services with any reporting entity.

Contracts with public entities prohibited.

(2) A public officer shall not be a party to or beneficiary of a contract for the disposal of goods with any reporting entity.

(3) A public officer shall not, in the exercise of official power, duty or function, award or influence the award of a contract in which the officer has a private interest.

(4) A person who contravenes any provision of this section commits an offence.

20. (1) A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.

Acquisition of interest in partnerships and private companies.

(2) Subsection (1) shall not apply to interests acquired through trading in the regulated financial markets provided that the public officer shall not acquire controlling shares in the entity.

(3) A person who contravenes subsection (1) commits an offence.

21. (1) A public officer shall not—

Conflict in recruitment.

- (a) participate in or influence a recruitment and selection process in which the public officer has a private interest; or

- (b) canvass for a candidate in a recruitment and selection process in which the public officer has a private interest.

(2) Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence.

22. (1) A public officer shall not enter into an arrangement with a public officer of another reporting entity in furtherance of an action which would amount to concealing conflict of interest.

Collusion by public officers to conceal conflict of interest.

(2) A person who contravenes subsection (1) commits an offence.

23. (1) A public officer shall, while serving in a reporting entity, not engage in any other gainful employment which—

Restricted gainful employment.

- (a) is inherently incompatible with the official duties of the public officer;
- (b) results in the impairment of judgment of the public officer in the execution of official duties;
- (c) results in conflict of interest; or
- (d) the public officer is mandated to regulate or exercise oversight.

(2) Where a public officer engages in gainful employment which is not prohibited under this Act, the officer shall, within thirty days of taking up the employment, make a declaration of the employment in the prescribed form and register the declaration with the reporting authority and the Commission.

(3) A public officer shall not engage in any other gainful employment without permission from the reporting authority.

(4) A person who contravenes any provision of this section commits an offence.

24. (1) The reporting authority of a reporting entity shall maintain a register of conflict of interest in the prescribed manner.

Register of conflict of interest.

- (2) The register referred to in subsection (1) shall —
- (a) contain the particulars of the registrable interests of a public officer set out in the Second Schedule;
 - (b) state the nature and extent of a conflict; and
 - (c) be open to the public for inspection.

25. (1) An appointed public officer, other than a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties —

Political neutrality.

- (a) act as an agent for, or further the political interests of a political party or political candidate; or
- (b) manifest support for or opposition to any political interests of a political party or political candidate.

(2) A person who contravenes subsection (1) commits an offence.

26. (1) An appointed public officer shall not —

Public collections.

- (a) solicit for contributions from the public unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster;
- (b) participate in collection of funds from the public, either as a collector or promoter in a way that reflects adversely on the integrity and impartiality of the public officer or interferes with the performance of the of the duties of the public officer; or
- (c) use official social media platforms or his place of work as a venue for soliciting or collecting funds.

(2) A public officer shall not use his official position to solicit funds or coerce any person to contribute towards a private fund collection.

(3) A person who contravenes subsection (1) or (2) commits an offence.

27. (1) A former public officer shall not —

Prohibitions after leaving office.

- (a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a party

and with respect to which the former public officer had acted for, or provided advice to the State;

- (b) be engaged by or act for or against his former employer for at least two years after ceasing to be a public officer;
- (c) use information obtained in his official capacity and which is not available to the public to further the interests of another person or entity; or
- (d) accept any appointment to a board of directors of, or employment with, a private entity with which the public officer had significant official dealings during the period of two years immediately preceding the termination of his service.

(2) The official dealings referred to in sub section (1) (d), may be either directly on the part of the public officer or through private affiliations.

(3) A person who contravenes subsection (1) commits an offence.

28. A former public officer shall not, during the period of two years immediately preceding the termination of service represent, vouch for or defend any person, whether for remuneration or not, before any reporting entity with which the former public officer had direct and significant official dealings.

Prohibition against representing people before reporting entities.

29. (1) A former public officer may, upon making an application in writing, be exempted by the Commission from the provisions of section 27 and 28, on the grounds that—

Exemption of former public officers.

- (a) the former public officer was not directly involved in decision making in the reporting entity;
- (b) the former public officer had no access to important policy information in the reporting entity; or
- (c) the former public officer possesses expertise that is rare in the public service.

(2) The Commission shall, within thirty days from the date of the application, in writing, communicate the decision made to the former public officer who applied for the exemption.

PART IV—COMPLIANCE MEASURES

30. (1) A public officer shall recuse himself from any discussion, decision, debate or vote on any matter in respect of which the public officer would be in conflict of interest.

Duty to recuse.

(2) Where a public officer recuses himself under subsection (1)—

- (a) the recusal shall be recorded in the minutes of the transaction in question; and
- (b) the public officer shall, within sixty days after the day on which the recusal took place, file a declaration of the recusal with the reporting authority and the Commission in the prescribed form, providing sufficient details as to identify the conflict of interest that was avoided.

31. (1) Every public officer shall submit to the Commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.

Declaration of income, assets and liabilities by public officers.

(2) The declaration referred to under sub section (1), shall be in Form 1 set out in the First Schedule.

(3) Notwithstanding the generality of subsection (1), a public officer shall in a periodical or final declaration provide information on any material change in, or changes affecting any of the categories of income, assets or liabilities in the schedule of mandatory declarations that have occurred within the two year period prior to the declaration.

(4) For purposes of this section, “material change” means—

- (a) at least twenty five percent increase or decrease in the value of an income, asset or liability;
- (b) the disposal or acquisition of an asset or liability;
- (c) changes in marital status;
- (d) appointment to or changes in directorships;
- (e) changes in membership in companies or partnerships and other legal entities howsoever established; or

- (f) changes in membership in social associations, societies, clubs, foundations or trusts.

32. (1) A public officer shall, within thirty days of appointment as a public officer, submit an initial declaration relating to his financial affairs for the period of one year prior to appointment.

Timelines for declaration.

(3) Every public officer shall, once every two years within the period of service, submit a declaration relating to the financial affairs of the public officer as at 1st of November of the declaration year, and such declaration shall be made within the month of December next following.

(4) A public officer shall, within thirty days after ceasing to be a public officer, submit a final declaration relating to his financial affairs as at the date he ceases to be a public officer.

33. (1) Upon receipt of the declaration made under section 31, the Commission shall analyse the declaration to ascertain—

Clarification.

- (a) its completeness and correctness;
- (b) whether the declaration raises possible issues of conflict of interest; and
- (c) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(5) The Commission may, within six months of receipt of a declaration, request, in writing, for clarification from the public officer who submitted the declaration under section 31.

(6) A public officer from whom clarification is sought under sub section (2) shall, within fourteen days of receipt of the request, provide the clarification to the Commission.

(7) A request for clarification may include a requirement that—

- (a) the omitted information be provided; or
- (b) any discrepancy or inconsistency, including a discrepancy or inconsistency arising out of the omission, be explained or corrected.

(5) The Commission may verify any information provided in the declaration.

34. (1) Any declaration made under this Act shall be accessible to any person upon making an application to the Commission in the prescribed manner, if the applicant satisfies the Commission that he has a legitimate interest and good cause in the furtherance of the objectives of this Act.

Access to declarations.

(8) Notwithstanding subsection (1), a law enforcement agency shall have unrestricted access to the disclosures and compliance reports made by a public officer under this Act.

(9) A person who obtains information under subsection (1), shall not publish or in any way make public such information without prior written authority of the Commission.

(10) A person who contravenes sub section (3) commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or both.

35. The Commission shall keep information collected under this Act concerning a person for at least five years after the person ceases to be a public officer.

Retention of information.

36. (1) A public officer who fails to submit any information required under this Act, within the prescribed period, commits an offence.

Failure to submit information.

(2) A reporting authority who fails to submit any information required under this Act, within the prescribed period, shall pay to the Commission a penalty of three million shillings.

37. A public officer who submits information that the public officer knows, or ought to know, is false or misleading, commits an offence.

False information.

38. A public officer shall within ninety days after the date of appointment or in the course of employment divest any private interest that would place the public officer in a conflict of interest situation.

Divestiture.

39. The private interests referred to in section 38 may be divested by—

Methods of divestment.

- (a) selling them in an arm's-length transaction; or
- (b) placing them in a blind trust that meets the requirements of section 40.

40. (1) A blind trust shall provide that—

Blind trust requirements.

- (a) the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;
- (b) the public officer shall not have any power of management or control over the trust assets;
- (c) the trustee shall not seek or accept any instruction or advice from the public officer concerning the management of the assets;
- (d) the assets placed in the trust shall be listed in a schedule attached to the instrument or contract establishing the trust;
- (e) the term of any trust shall be for as long as the public officer who establishes the trust continues to hold the office or until the trust assets are depleted;
- (f) the trustee shall deliver the trust assets to the public officer when the trust is terminated;
- (g) the trustee shall not provide information about the trust, including its composition, to the public officer except for information that is required by law to be filed by the public officer and periodic reports on the overall value of the trust;
- (h) the public officer may receive any income earned by the trust and add to or withdraw from the capital funds in the trust;
- (i) the trustee shall be at arm's length from the public officer and the Commission is to be satisfied that an arm's length relationship exists;
- (j) the trustee may be—
 - (i) the public trustee;
 - (ii) a registered trustee; or
 - (iii) a listed company or a subsidiary wholly owned by a listed company, including a trust

company or investment company, that is qualified to perform the duties of a trustee; or

- (k) the trustee shall provide the Commission, on every anniversary of the trust, with a written annual report verifying the accuracy, nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the year preceding, and the fees of the trustee, if any.

(2) Despite subsection (1), general investment instructions may be included in a blind trust instrument or contract but only with the prior approval of the Commission.

(3) Oral investment instructions shall not be given with respect to a contract or instrument that establishes a blind trust.

41. A public officer shall submit to the Commission—

Confirmation of blind trust or sale.

- (a) a copy of any instrument or contract establishing a blind trust; or
- (b) proof of sale of any asset, gift, inheritance or other private interests that are the subject of divestment.

42. The Commission shall, unless otherwise required by law, keep confidential any information provided by a public officer relating to a divestment under this Act.

Confidentiality of divestment.

43. (1) A public officer shall not be required to divest an asset that has been given as security to a lending institution.

Assets given as security.

(2) Despite subsection (1), a public officer shall—

- (a) disclose to the Commission the discharge of the secured asset referred to in subsection (1); and
- (b) where the interests of the public officer in the asset would place the officer in a conflict of interest situation, take the necessary steps to divest the discharged asset in accordance with this Act.

(3) A public officer shall not charge an asset in order to defeat divestiture requirements under this Act.

(4) A person who contravenes sub section (2) or (3) commits an offence.

44. A public officer shall not be required to divest an asset if, in the opinion of the Commission, the asset is of such minimal value that it does not pose any risk of conflict of interest in relation to the duties and responsibilities of the officer.

Assets of minimal value.

45. The Commission may order a person, in respect of any matter, to take any compliance measure that the Commission considers necessary for the compliance with this Act, including divestment or recusal.

Compliance orders.

46. A report on compliance with an order made by the Commission under section 45 may contain a description of—

Report on compliance with orders of the Commission.

- (a) the asset or the interest and the method used to divest it;
- (b) the process to be put in place by the public officer to effect the recusal; and
- (c) the steps taken by the public officer to comply with the order.

47. The Commission shall, within twelve months after the commencement of this Act, develop and publish in the Gazette, administrative mechanisms for the implementation of the requirements of this Part.

Publication of administrative mechanisms.

PART V— COMPLAINTS AND CONDUCT OF INVESTIGATIONS

48. (1) A person who alleges that a public officer has contravened any provision of this Act may lodge a complaint with the reporting authority or the Commission and the report shall be recorded in a register of complaints.

Lodging of complaints and investigations.

(2) The reporting authority or the Commission may investigate the complaint and determine whether the public officer has contravened this Act.

(3) A reporting authority or the Commission may initiate an investigation on its own volition.

(4) A public officer who is under investigation under this section shall be informed of the allegations made and shall be given a reasonable opportunity to make a representation relating to the issue before the investigation is concluded.

(5) A person who lodges a complaint against a public officer shall be informed of any action taken or to be taken in respect of the complaint.

(6) Where an investigation under this section is initiated while the public officer is in office, the investigations may be continued even after the public officer has ceased to be in office.

(7) The reporting entity or a reporting authority may take disciplinary action against a public officer serving in a reporting entity.

49. (1) Despite section 48, the Commission shall not commence investigations if—

Discretion in investigations.

- (a) the subject matter of the request does not disclose an issue of conflict of interest under this Act;
- (b) the subject matter of the request has been adequately dealt with, or could more appropriately be dealt with according to a procedure provided for under another Act of Parliament; or
- (c) the substance of the request is frivolous, vexatious or made in bad faith.

(2) If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision.

50. (1) Subject to the Constitution and any written law, a State officer or public officer may be suspended from office pending the investigation and determination of allegations made against that officer where such suspension is considered necessary.

Suspension from office.

(2) Despite sub section (1), the period of suspension of a State officer or public officer shall not exceed ninety days.

51. (1) The Commission may, pursuant to an investigation conducted under this Act—

Recommendations of the Commission.

- (a) recommend to a public entity to take disciplinary or other administrative action against a State or public officer alleged to have contravened the provisions of this Act;

- (b) recommend to a public entity, appointing authority or the public officer, to take such measures as may be appropriate to ensure compliance with, or cessation of further violation of, the provisions of this Act;
- (c) recommend to any other relevant public body to take appropriate action against a state or public officer, an associate to a state or public officer or a company in which a state or public officer has a controlling interest in; or
- (d) recommend to the Director of Public Prosecution the prosecution of a person who contravenes this Act.

(2) Where a public entity, Appointing Authority or public officer fails to implement the recommendations under subsection (1) (a) (b) or (c), the Commission may make an application before the High Court for appropriate orders requiring the public entity, authorized officer or public officer to comply.

PART VI—MISCELLANEOUS PROVISIONS

52. (1) A person who contravenes any provision of this Act for which no penalty is provided shall, upon conviction, be liable to—

General Penalty.

- (a) if the person is a natural person, a fine not exceeding four million shillings or to a term of imprisonment not exceeding ten years, or to both; or
- (b) if the person is a body corporate, a fine not exceeding ten million shillings; and

(2) In addition to the penalty under subsection (1), the person shall be liable to a further 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.

(3) The mandatory fine referred to in subsection (2) 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 (2); or

- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

53. The Commission or any person acting on its behalf shall not, unless required by law, disclose any information that comes to their knowledge in the performance of their duties under this Act, unless the disclosure is, in the opinion of the Commission, essential for the purposes of carrying out its functions and exercising the powers conferred on it under this Act or is required by any law enforcement agency.

Confidentiality.

54. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

Protection of person making disclosure.

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) Disclosure of information under subsection (1) and (2) shall be information on conflict of interest.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to

whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

55. No criminal or civil proceedings shall lie against the Commission or any person acting on behalf of the Commission, for anything done, reported or said in good faith in the exercise of any power, or the performance of any function of the Commission under this Act.

Protection from liability.

56. Every reporting entity shall file compliance reports with the Commission in the prescribed form.

Reports by reporting entities.

57. (1) The Attorney-General may make regulations for the better carrying out the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of sub-section (1), the Attorney-General may make regulations prescribing—

- (a) exceptional circumstances under which complimentary treatment may be accepted under this Act;
- (b) the mechanism and procedure for the opening, maintaining and publicizing of registers of conflict of interest; and
- (c) anything required to be prescribed under this Act.

PART VII—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

58. The Public Officer Ethics Act, 2003 is repealed.

Repeal of Act No. 4 of 2003. Saving and transitional provisions.

59. (1) Notwithstanding section 31, any entity which immediately before the commencement of this Act was designated as a responsible commission shall, upon such commencement, remain the responsible commission in respect of any declaration made by a public officer under this Act, until the administrative mechanisms referred to in section 47 are developed by the Commission.

(2) Any statutory instrument made under the repealed Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked or repealed by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

(3) A public officer who is in office at the commencement of this Act shall divest his assets in

accordance with the provisions of this Act within twenty-four months of the commencement of this Act.

60. The Leadership and Integrity Act, the Ethics and Anti-corruption Commission Act and the Anti-Corruption and Economic Crimes Act are amended in the manner specified in the Third Schedule.

Consequential amendments.

FIRST SCHEDULE**FORM 1 [s. 31(2)]****DECLARATION OF INCOME ASSETS AND LIABILITIES**

The attention of all public officers is drawn to their obligation to declare their Income, Assets and Liabilities under the Conflict of Interest Act (No.....). Public officials are advised to familiarize themselves with the provisions of the Act and the applicable Code of Conduct and Ethics for their respective reporting entity.

GUIDELINES ON THE COMPLETION OF THE DECLARATION OF INCOME, ASSETS AND LIABILITIES.

A public officer should read these guidelines carefully and follow the instructions in the form before completing it. When completing the form, a public officer shall write legibly, type or print the required information.

1. The form may be downloaded from the Ethics and Anti-Corruption Commission website (www.eacc.go.ke).
2. Where the Commission has a web application for filing the declaration, a public officer may fill and submit the declaration online. In such a case, a physical signature or delivery acknowledgment slip will not be necessary.
3. The declaration is for the income, assets and liabilities of a public official, his spouse or spouses and his dependent children under the age of 18 years.
4. All public officers are required to complete and submit their declarations to the Commission, unless the Commission has delegated its functions to another body or the reporting authority of the concerned public officer.
5. The obligation to make declarations applies to all state and public officers including those on leave, under disciplinary action, secondment and overseas assignments, unless the Attorney General has granted a dispensation exempting an officer or a certain category of public official from filing their declarations, for reasons to be published in the *Gazette*.
6. The responsibility of ensuring that a declaration has been received by the appropriate reporting authority or its agent lies on the public officer. Provided that where the officer sends the form under confidential cover directly to the Commission, the officer should label the envelope with the words "Declaration of Incomes, Assets

and Liabilities". The organization and job group of the officer should also be indicated on the envelope.

7. A public officer is required to complete an *initial* declaration within thirty days of appointment and the statement date of the declaration will be the date the officer became a public officer.
8. A public officer is required to make a *biennial* declaration on or before the 31st day of December every other year or as may be provided for under the Act. The statement date for the biennial declaration will be 1st of November of the year in which the declaration is required.
9. A public officer is required to make a *final* declaration within thirty days of ceasing to be a public officer. The statement date of the *final* declaration shall be the date the public official ceased to be a public official.
10. A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct to the best of their knowledge.
11. If space on the form is not adequate, additional information may be included on separate sheets, while clearly indicating the number and paragraph being continued.
12. For each form submitted, there will be an acknowledgment slip issued by the Commission or its agent.
13. Where a declaration is submitted electronically in accordance with the regulations made under this Act or administrative procedures adopted by the Commission or any other competent authority, the declaration shall be valid notwithstanding the absence of a signature or acknowledgement stamp or receipt or slip.
14. Income, assets and liabilities that a public officer may have outside Kenya, should be declared. Joint assets, properties, personal and business accounts within and outside Kenya should also be declared.
15. Where a public officer has contravened the provisions of the Code of Conduct and Ethics relating to the declaration of Income, Assets and Liabilities, appropriate disciplinary action will be taken by the Commission, or other appropriate authority, in accordance with the applicable disciplinary procedures.

PART I: INFORMATION ON PUBLIC OFFICER**1.) Personal Information (Please tick (✓) where appropriate)**

(a) Declaration Status					
Initial <input type="checkbox"/>		Biennial <input type="checkbox"/>		Final <input type="checkbox"/>	
(b) Name of Public Officer (Self)					
Surname		First Name		Other Names	
ID No.	Employee/Co-operative Society No.	PIN	Passport No.	Expiry Date of Passport	
(c) Birth Information					
Date of Birth	Place of Birth		Nationality	Mode of acquisition of nationality (e.g., birth, registration, etc)	
County	Sub-County	Location	Sub-location	Village	
(d) Sex		(e) Marital Status			
Male <input type="checkbox"/> Female <input type="checkbox"/>		Married <input type="checkbox"/> Single <input type="checkbox"/> Other _____			
(f) Address					
Postal address	Residence (Area/County)	Telephone contacts	E-mail address		
(g) Employment Information					
Name of employer	Job Group/Grade/Scale	Date of First appointment	Date of Present appointment		

<i>Designation</i>	<i>Position</i>		<i>Rank</i>	
<i>Work Station</i>	<i>Sub-County</i>		<i>County</i>	
(h) Nature of employment				
<i>Permanent</i> <input type="checkbox"/>	<i>Temporary</i> <input type="checkbox"/>	<i>Contractual</i> <input type="checkbox"/>	<i>Others (specify)</i>	
<i>Offers of future employment</i>	<i>Membership of remunerative Boards and Committees</i>	<i>Date of Retirement (if on Permanent and/or Pensionable employment)</i>	<i>Expected date of expiry of contract or temporary employment or membership of remunerative Boards or Committees</i>	

2.) Information on spouse(s)

Surname	First name	Other names	ID No.	PIN	Occupation

3.) Particulars of dependent children under the age of 18 years

Surname	First name	Other names	Date of Birth

PART II: INCOME, ASSETS AND LIABILITIES**(1) Income**

This includes but is not limited to—

(a) General Income;

(b) Business Income (e.g. from companies, partnerships etc.)

Type of income	Self	Spouse(s)	Dependant(s)	Total (Kshs.).

(2) Assets**(A) Financial assets**

These include but are not limited to—

(a) Cash in Banks and Financial Institutions;

(b) Bonds, Stock and Shares (including shares in cooperatives, private and public companies)

	<i>Name and Branch of bank/Financial Institution / Organization in which held</i>	<i>Account Name/ CDSC account/ Share Certificate /SACCO Membership number</i>	<i>Account Number/ CDSC account/ Share Certificate/ SACCO Membership number.</i>	<i>Balance as at the beginning of statement period(Kshs. /No. of Shares/ Acquisition value (Kshs.)</i>	<i>Balance as at statement date(Kshs.) /Current Market value (Kshs.)</i>
<i>Self</i>					
<i>Spouse(s)</i>					
<i>Dependant(s)</i>					

(D) Intellectual property

	<i>Description</i>	<i>Certificate No./Registration No./Identifying No.(where applicable)</i>	<i>Approximate value Current market price (Kshs.)</i>
Self			
Spouse(s)			
Dependant(s)			

(3) Liabilities

These include but are not limited to-

- (a) Liabilities in banks / financial institutions (Business loans, personal loans, overdraft, mortgage, SACCO loans, etc)*
- (b) Other Liabilities (rent, levies, school fees, license fees, utility bills etc)*
- (c) Donations and charitable contributions*

	Description	Creditor name and address	Date incurred	Nationality of creditor	Location of security	Amount advanced (Gross value of credit) (Kshs.)	Outstanding amount as at statement date Current market price (Kshs.)
Self							
Spouse(s)							
Dependant (s)							

PART III: ADDITIONAL INFORMATION

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

.....

.....

.....

.....

.....

PART IV: DECLARATION

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

Date :

Signature of Public Official:

FOR OFFICIAL USE

- 1. Date of declaration:
- 2. Date of receipt of declaration:
- 3. Action taken:
 - (a) Acknowledgement Slip issued:.....
 - (b) Filed:
 - (c) Sent for verification / clarification:
 - (d) Comments:
 -
 -
 -
 -
 -

Name of Receiving Official :

Signature

DECLARATION OF INCOME, ASSETS AND LIABILITIES
ACKNOWLEDGEMENT SLIP

Name of the reporting entity:.....

Name of the reporting authority (*where applicable, e.g. Principal Secretary, Ministry of ...*):

Name of Public Official:

Personal/ Employee No.

Address:

Date of submission:

Delivered by:

Comments

.....

.....

.....

.....
.....

Name:

For: (The Commission or agent)

Signature :

Date.....

Stamp :

SECOND SCHEDULE. [s. 2 , S. 24(2)(a)]**REGISTRABLE INTERESTS**

For purposes of Section 24 (2) the following are categories of income, assets and liabilities which a public official must declare—

(a) Income—

- (i) Windfall gains
- (ii) Rental income
- (iii) Business income from any trade or profession
- (iv) Employment Income
- (v) Farming income
- (vi) Dividends
- (vii) Interest
- (viii) Investment Returns
- (ix) Pensions and annuities
- (x) Royalties
- (xi) Cash or material awards
- (xii) Insurance bonuses
- (xiii) Grants
- (xiv) Any other income that is taxable

(b) Assets

- (i) Ownership of or interest in a scheme, fund or entity howsoever established or structured or administered;
- (ii) cash at hand and at bank;
- (iii) Land, whether developed or undeveloped;
- (iv) any trusts in respect of which a public official or a member of his or her family is a beneficiary;
- (v) works of art, antiques, precious metals, jewelry or collectibles;
- (vi) automobiles, marine vessels and aircrafts;
- (vii) treasury bonds and bills;

- (viii) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, shares, stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;
- (ix) equity held in an entity that is not publicly listed or traded whether registered in Kenya or another jurisdiction;
- (x) retirement savings plans, education savings plans and retirement income funds;
- (xi) commodities, futures and foreign currencies held or traded for speculative purposes;
- (xii) stock options, warrants, rights and similar instruments registered retirement savings plans, education savings plans, insurance and other life saving plans, annuities;
- (xiii) investments in mutual funds;
- (xiv) primary and secondary residences, recreational property, farmland and buildings;
- (xv) personal loans of not less than Ksh.100,000 receivable from relatives and other persons;
- (xvi) debts owed to the public official including by previous employer, client or partner; public and private sector debt financing not guaranteed by a level of government, such as university and hospital debt financing.

(c) Liabilities—

- (i) Secured and unsecured loans;
- (ii) Mortgages;
- (iii) Debts owed by the official;
- (iv) Outstanding imprest due to the Government;
- (v) Outstanding Salary advance.

THIRD SCHEDULE [s.59].
CONSEQUENTIAL AMENDMENTS

Written Law	Provision	Amendment
The Anti-Corruption and Economic Crimes Act No.3 of 2003	Section 42	Delete
	Section 62(6)	Delete
The Ethics and Anti-corruption Commission Act, No. 22 of 2011.	Section 11	Amended in subsection (1) by inserting the following new paragraph immediately after paragraph (l)— (k) perform any other functions and exercise any other powers conferred by an Act of Parliament.
The Leadership and Integrity Act, No. 19 of 2012.	Section 2 (2)	Delete
	Section 6 (3)	Delete.
	Section 6 (4)	Delete
	Section 13(1)(a)	Delete and substitute therefor the following new paragraph— 13. (1)(a) demonstrate honesty in the conduct of public affairs;
	Section 14	Delete
	Section 16	Delete
	Section 17	Delete
	Section 18	Delete
	Section 23	Delete
	Section 26	Delete
	Section 27	Delete
Section 28	Delete	
Section 52	Delete and substitute therefor the following new section—	

		<p>52. Pursuant to Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and this Act shall apply to all public officers as if they were State officers.</p>
<p>The Public Procurement and Assets Disposal Act, No. 33 of 2015</p>	<p>Section 59</p>	<p>Delete and substitute therefor the following new section—</p> <p>59. (1) A state organ or public entity shall not enter into a contract for procurement with a state or public officer.</p> <p>(2) A state or public officer shall not directly or indirectly award or influence the award of a contract to—</p> <ul style="list-style-type: none"> (a) the state officer’s or public officer’s spouse or child; (b) the officer’s business associate or agent; or (c) a corporation, private company, partnership or other body in which the officer has a substantial or controlling interest. <p>(3) A state officer or public officer who has an interest in a matter under consideration in a public procurement or asset disposal shall disclose in writing, the nature of that interest and shall not participate in any procurement or asset disposal relating to that interest.</p>

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of the Bill is to provide for the management of conflict of interest in the discharge of official duties.

Part I of the Bill provides for the preliminary matters including the application of the Bill and interpretation.

Part II of the Bill provides for the administration of the Act and vests the administration of the Act on the Ethics and Anti-Corruption Commission. It sets out the functions and powers of the Commission in relation to the management of conflict of interest.

Part III of the Bill defines situations that amount to conflict of interest and imposes obligations on public officers to avoid situations that would result in conflict of interest. It prohibits public officers from engaging in activities that would cause conflict between private interests and public interest or official duty. The part also creates offences for engaging in prohibited activities that result in conflict of interest or for failing to declare situations where private interests conflict with or are likely to conflict with public interests. It also prohibits former public officers from engaging in activities that would result in conflict of interest after ceasing to be a public officer.

Part IV of the Bill provides for compliance measures. It sets out the steps that a public officer should take in situations where the public officer's private interests conflict or are likely to conflict with public interests and official duty. The steps include recusal, declaration of income, assets and liabilities by public officers and divestiture.

PART V provides for the lodging of complaints and conduct of investigations. It sets out the procedure for reporting any violation of the Act to the Commission and to reporting entities. It also provides for temporary vacation of office by public officers who are under investigations and stipulates the recommendations that may be made by the Commission to a reporting entity upon the conclusion of investigations.

PART VI contains miscellaneous provisions that provide for the general penalty, the filing of returns by reporting entities, the power of the Attorney-General to make regulations and the repeal of the Public Officers Ethics Act.

PART VII encompasses the repeal, savings and transitional provisions. It provides for the repeal of the Public Officers Ethics Act and the consequential amendment of the Leadership and Integrity Act, the

Ethics and Anti-corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Public Procurement and Assets Disposal Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Clause 56 of the Bill delegates the power to make regulations to the Attorney-General. The Bill does not limit any fundamental rights and freedoms.

Indication of whether the Bill concerns counties

This Bill is a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 21st March, 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

