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COMMISSION ON REVENUE ALLOCATION ACT

NO. 16 OF 2011

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COMMISSION ON REVENUE ALLOCATION ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

- 1. Short title.
- 2. Interpretation.

PART II – COMPOSITION AND ADMINISTRATION

- 3. Powers of the Commission as a body corporate.
- 4. Headquarters.
- 5. Appointment of members.
- 6. Qualification for appointment of chairperson and members.
- 7. Oath of office.
- 8. Vacancy in office of chairperson or member.
- 9. Filling of vacancy.
- 10. Recommendations by the Commission.
- 11. Terms and conditions of service.
- 12. Committees of the Commission.
- 13. Procedures of the Commission.
- 14. Appointment of Secretary.
- 15. Removal of secretary.
- 16. Staff of the Commission.
- 17. The common seal of the Commission.
- 18. Protection from personal liability.

PART III – FINANCIAL PROVISIONS

- 19. Funds of the Commission.
- 20. Financial year.
- 21. Annual estimates.
- 22. Accounts and audit.

PART IV – MISCELLANEOUS PROVISIONS

- 23. Report of the Commission.
- 24. Offence.
- 25. Regulations.
- 26. Code of conduct.
- 27. Transitional provision.

SCHEDULES

FIRST SCHEDULE —

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

SECOND SCHEDULE —

MEETINGS AND PROCEDURE OF THE
COMMISSION

NO. 16 OF 2011

COMMISSION ON REVENUE ALLOCATION ACT

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

[Date of commencement: 30th August, 2011.]

An Act of Parliament to make further provision as to the functions and powers of the Commission on Revenue Allocation, the procedure for appointments to the Commission and for connected purposes

[Act No. 16 of 2011, Act No. 12 of 2012, Act No. 57 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Commission on Revenue Allocation Act, 2011.

2. Interpretation

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

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**chairperson**” means the chairperson of the Commission appointed under Article 215 of the Constitution;

“**Commission**” means the Commission on Revenue Allocation established by Article 215 of the Constitution;

“**member**” means a member of the Commission appointed under Article 215 of the Constitution;

“**public officer**” means a person holding a public office as defined in the Constitution;

“**revenue**” means all taxes imposed by the national government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorised by an Act of Parliament, but excludes revenues referred to under Articles 209(4) and 206(1)(a)(b) of the Constitution;

“**secretary**” means the secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution in accordance with the procedure set out in section 14.

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

PART II – COMPOSITION AND ADMINISTRATION

3. Powers of the Commission as a body corporate

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

- (a) acquire, hold, charge and dispose off movable and immovable property; and

- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may lawfully be done or performed by a body corporate.

4. Headquarters

The headquarters of the Commission shall be in the capital city, but the Commission may establish branches at any place in Kenya.

5. Appointment of members

(1) The chairperson and members of the Commission shall be appointed in accordance with the provisions of Article 215 of the Constitution and this Act.

(2) Any of the members of the Commission may serve on a part-time basis.

(3) The chairperson and members of the Commission shall be non-executive and shall perform their functions in accordance with Article 216 of the Constitution.

[Act No. 12 of 2012, Sch.]

6. Qualification for appointment of chairperson and members

(1) A person shall be qualified for appointment as the chairperson or a member if the person—

- (a) holds a degree from a university or an equivalent professional qualification recognized in Kenya;
- (b) has professional experience in financial and economic matters of at least fifteen years in the case of the chairperson and ten years in the case of any other member;
- (c) has had a distinguished career in their respective fields; and
- (d) meets the requirements of Chapter Six of the Constitution.

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

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an elected member of a local authority;
- (d) is an undischarged bankrupt;
- (e) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (f) has not met his or her legal obligations relating to tax and other statutory obligations.

7. Oath of office

The chairperson, the members and the secretary shall each make and subscribe, before the Chief Justice, to the respective oath or affirmation set out in the First Schedule.

8. Vacancy in office of chairperson or member

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

- (a) dies;
- (b) by a notice in writing addressed to the President resigns from office; or

- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

9. Filling of vacancy

(1) Where a vacancy occurs in the membership of the Commission under section 8, the appointment procedure provided for under the Constitution and this Act shall apply.

(2) A member appointed under subsection (1) shall serve for a term of six years but shall not be eligible for reappointment.

10. Recommendations by the Commission

(1) In addition to its principal function under Article 216(1) of the Constitution, the Commission shall, in accordance with clause (2) of that Article—

- (a) make recommendations for consideration by Parliament prior to any Bill appropriating money out of the Equalization Fund is passed in Parliament;
- (b) upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government;
- (c) submit recommendations to the Senate, National Assembly, national executive, County Assembly and county executive on the proposals made for equitable distribution of revenue between the national and county governments and amongst the county governments taking into account the criteria set out in Article 203 of the Constitution, including recommendations on the amounts earmarked for specific purposes such as the constituency development fund, among others; and
- (d) perform such other functions as are provided for by the Constitution or any other written law.

(2) In making recommendations under this section, the Commission shall take into consideration such facts or information as may be given to it by a County Government.

(3) The recommendations made by the Commission under this section shall be acted upon within such period as is reasonably practicable.

11. Terms and conditions of service

The salaries and allowances payable to the chairperson and members shall be determined by the Salaries and Remuneration Commission.

12. Committees of the Commission

(1) The Commission may, from time to time, establish committees for the better carrying out of its functions.

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

13. Procedures of the Commission

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

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

14. Appointment of secretary

(1) The appointment of the secretary to the Commission under Article 250(12) of the Constitution shall be through a competitive recruitment process.

(2) A person shall not qualify for appointment under subsection (1) unless such person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya;
- (c) has had at least ten years professional experience in economic and financial matters; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) A person appointed as a secretary under Article 250(12) of the Constitution shall be a State officer.

(4) As the chief executive officer, the secretary shall be responsible to the Commission for—

- (a) facilitating the carrying out of the functions of the Commission;
- (b) the day to day administration and management of the affairs of the Commission;
- (c) such other duties as may be assigned by the Commission from time to time.

(5) Notwithstanding the provision of any other written law, the secretary, as the accounting officer shall be responsible for—

- (a) all income and expenditure of the Commission;
- (b) all assets and the discharge of all liabilities of the Commission; and
- (c) the proper and diligent implementation of Part III of this Act.

15. Removal of secretary

(1) The secretary may be removed from office by the Commission, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), he or she shall be informed of the case against him or her and shall be given an opportunity to defend himself or herself against any allegations made against him or her.

16. Staff of the Commission

The Commission shall, pursuant to Article 252(1)(c) of the Constitution, employ its own staff through a competitive and transparent process.

17. The common seal of the Commission

(1) The Common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

18. Protection from personal liability

No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

PART III – FINANCIAL PROVISIONS

19. Funds of the Commission

- (1) The funds of the Commission shall consist of—
- (a) monies allocated by Parliament for the purposes of the Commission;
 - (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and
 - (c) all monies from any other source provided or donated or lent to the Commission.

20. Financial year

The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in each year.

21. Annual estimates

(1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned.

(3) The annual estimates prepared by the Commission under subsection (2) shall be submitted to the Cabinet Secretary for tabling in the National Assembly at least three months before the beginning of the next financial year.

22. Accounts and audit

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

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission in respect of that year together with a—

- (a) statement of the income and expenditure of the Commission during that year; and
- (b) statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act, 2003 (No. 12 of 2003).

PART IV – MISCELLANEOUS PROVISIONS

23. Report of the Commission

The report of the Commission under Article 254 of the Commission shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

24. Offence

(1) A person shall not—

- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten a member or staff of the Commission acting under this Act;
- (b) submit false or misleading information; or
- (c) misrepresent to, or knowingly mislead, the member or a member of staff of the Commission acting under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

25. Regulations

(1) The Commission may, with the approval of the National Assembly, make regulations generally for the better carrying into effect of any provisions of this Act.

(2) For the avoidance of doubt, the power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.

[Act No. 57 of 2012, s. 60.]

26. Code of conduct

The Commission shall develop a code of conduct for its members and staff.

27. Transitional provision

For the avoidance of doubt and notwithstanding any other provision of this Act, the provisions of this Act shall apply without prejudice to the appointment and terms and conditions of service of the chairperson and members of the Commission in office at the commencement of this Act.

FIRST SCHEDULE

[Section 7.]

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

I.....having been appointed (the chairperson/ member of /Secretary to) the Commission on Revenue Allocation under the Commission on Revenue Allocation Act, 2011, do swear/ solemnly affirms that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this.....Day of.....

.....

Chief Justice

SECOND SCHEDULE

[Section 13.]

MEETINGS AND PROCEDURE OF THE COMMISSION

1. Meetings

(1) The Commission will decide when and where it meets and the meetings shall be convened by the chairperson.

(2) The Commission 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.

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

(4) A meeting shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

(5) The members of a Commission shall elect a vice-chairperson from among themselves—

- (a) at the first sitting of the commission; and
(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(6) The chairperson and vice-chairperson shall not be of the same gender.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

2. Conflict of interest

(1) If any person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

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

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

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

3. Quorum

(1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members.

(2) Where there is a vacancy in the Commission, the quorum of the meeting shall not be less than three appointed members.

4. Voting

Subject to paragraph 3, a question before the Commission shall be decided by simple majority.

5. Rules of Procedure and minutes

The Commission shall—

- (a) determine rules of procedure for the conduct of its business; and
 - (b) keep minutes of its proceedings and decisions.
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