



LAWS OF KENYA

INDEPENDENT OFFICES (APPOINTMENT) ACT

NO. 8 OF 2011

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INDEPENDENT OFFICES (APPOINTMENT) ACT

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OATH/AFFIRMATION OF THE HOLDER OF INDEPENDENT OFFICE

NO. 8 OF 2011

INDEPENDENT OFFICES (APPOINTMENT) ACT

[Date of assent: 5th July, 2011.]

[Date of commencement: 5th July, 2011.]

An Act of Parliament to provide the procedure for identification and recommendation for appointment of holders of independent offices, and for connected purposes [Act No. 8 of 2011. Act No 18 of 2014]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Independent Offices (Appointment) Act, 2011.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Auditor-General**” means the Auditor-General appointed under Article 229 of the Constitution;

“**Controller of Budget**” means the Controller of Budget appointed under Article 228 of the Constitution;

“**Independent office**” means the office of the Auditor-General or of the Controller of Budget, in accordance with Article 248(3) of the Constitution.

PART II – ADMINISTRATION

3. Powers of independent office as a body corporate

(1) In addition to the powers of an independent office under Article 253 of the Constitution, an independent office shall have the power to—

- (a) acquire, hold, charge and dispose of 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.

(2) The headquarters of an independent office shall be in the capital city but the independent office may establish branches at any place in Kenya.

4. Qualifications for appointment as independent office holder

(1) A person shall be qualified for appointment as the Auditor-General or the Controller of Budget if such person—

- (a) is a citizen of Kenya;
- (b) holds the respective qualifications for the office specified in Article 228 or 229 of the Constitution;

- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya;
- (d) meets the requirements of Chapter Six of the Constitution;
- (e) is a member in good standing of a professional body for accountants recognized by law.

(2) A person shall not be qualified for appointment under subsection (1) if the person—

- (a) is a member of Parliament;
- (b) is a member of a county assembly;
- (c) is a member of a local authority;
- (d) has not met his tax obligations;
- (e) has been removed from office for contravention of any law; or
- (f) is an undischarged bankrupt.

5. Procedure for appointment of holder of an independent office

(1) The President shall, within seven days of the commencement of this Act, or of the occurrence of a vacancy in an independent office, by notice in the *Gazette*, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the independent offices and invite applications.

(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any—

- (a) qualified person; or
- (b) person, organization or group of persons proposing the nomination of any qualified person.

(3) The names of all applicants under subsection (2) shall be published in the *Gazette*.

(4) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a committee comprising one representative each of the—

- (a) Office of the President;
- (b) Office of the Prime Minister;
- (c) Ministry for the time being responsible for matters relating to finance;
- (d) State Law Office;
- (e) Ministry for the time being responsible for matters relating to the public service; and
- (f) Institute of Certified Public Accountants of Kenya,

for the purpose of considering the applications and selecting at least three persons qualified for appointment as Auditor-General or Controller of Budget, as the case may be:

Provided that for the purposes of selection and short listing of the said three persons, the Public Service Commission shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include *inter alia*, scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

(5) The Public Service Commission, shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the President for nomination.

(6) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate each for appointment as the Controller of Budget and the Auditor-General and forward the names to the National Assembly.

(7) The National Assembly shall consider the nominations and may approve or reject the nominations.

(8) Where the National Assembly—

- (a) approves the nominees, the Speaker shall, within three days of the approval, forward the names of the approved nominees to the President for appointment;
- (b) rejects any nomination, the Speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the Public Service Commission under subsection (5).

(9) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (8), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(10) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the independent office holders approved by the National Assembly.

(11) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection committee convened under subsection (4).

(12) Despite the foregoing provisions of this section, the President in consultation with the Prime Minister may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

6. Vacancy

(1) An independent office 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 or Chapter Six of the Constitution.

Independent Offices (Appointment)

(2) If an independent office becomes vacant, or the holder of the office is unable to exercise the functions of the office due to mental, physical or other incapacity, the President may appoint the next senior-most person within that office to act in that capacity, and the person so appointed shall continue to act in that capacity until a substantive holder of the office is appointed, or, as the case may be, until the person in whose place he or she is acting resumes those functions:

Provided that an acting appointment shall not be for a period exceeding sixty days unless extended by the National Assembly.

[Act No. 18 of 2014]

7. Filling of vacancy

Where a vacancy occurs in an independent office under section 6, the procedure for appointment provided for under section 5 shall apply.

8. Oath of office

Each holder of an independent office shall, before assuming office, make and subscribe to the oath or affirmation set out in the Schedule before the Chief Justice.

PART III – MISCELLANEOUS PROVISIONS

9. Annual report

(1) The annual report of an independent office under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

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

(2) The annual report shall be published and publicized in the Gazette and in such other manner as the independent office may determine.

10. Transitional

The provisions of section 29 (2) of the Sixth Schedule to the Constitution shall apply with respect to the appointment of independent office holders before the first general election thereunder.

SCHEDULE

[Section 8.]

OATH/AFFIRMATION OF THE HOLDER OF INDEPENDENT OFFICE

I ... having been appointed (the Controller of under the Budget/Auditor-General) Independent Offices (Appointment) Act, 2011, do solemnly (swear/declare and affirm) 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 ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said ...
Before me this ... day of ...

Chief Justice.

