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KENYA ACCREDITATION SERVICE ACT

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KENYA ACCREDITATION SERVICE ACT

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NO. 17 OF 2019

KENYA ACCREDITATION SERVICE ACT

[Date of assent: 14th August, 2019.]

[Date of commencement: 2nd September, 2019.]

AN ACT of Parliament to establish an accreditation system; establish the Kenya Accreditation Service; recognize the Service as the sole national accreditation body; and for connected matters

[Act No. 17 of 2019.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Accreditation Service Act, 2019.

2. Interpretation

In this Act, unless the context otherwise requires—

"accreditation" means, in relation to a Conformity Assessment Body, an attestation by the Service that the conformity assessment body is competent to carry out specific conformity assessment tasks;

"Accreditation Advisory Committee" means an Accreditation Advisory Committee established under section 9;

"accredited body" means an organisation or a facility that has been accredited by the Service;

"accreditation certificate" means a document or set of documents that states that accreditation has been granted to the conformity assessment body named in the documents, the conditions under which the accreditation has been granted and the scope of the accreditation;

"accreditation mark" means the mark issued by the Service to be used by an accredited body to indicate that body's accreditation status;

"accreditation scheme" means the rules, processes or any other requirements established by the Service relating to specific conformity assessment activities to which a similar accreditation standard applies;

"accreditation symbol" means the symbol issued by the Service for use by a conformity assessment body to demonstrate its status of accreditation;

"assessment" means the process undertaken by the Service to evaluate the competence of a conformity assessment body based on particular standards or other normative documents for a defined scope of accreditation;

"Board" means the Board of Directors of the Service established under section 7;

"conformity assessment" means a demonstration that specific requirements relating to a product, process, system, person or body have been fulfilled;

"conformity assessment body" means a body that carries out compliance assessment services including testing, calibration, inspection, verification,

certification of management systems, certification of persons, certification of products, processes or services, proficiency testing and production of reference materials;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters related to accreditation;

"Chief Executive Officer" means the Chief Executive Officer of the Service appointed under section 21;

"scope of accreditation" means the specific conformity assessment services that may be offered by a conformity assessment body for which accreditation has been granted by the Service;

"Service" means the Kenya Accreditation Service established under section 4; and

"Tribunal" means the Accreditation Appeals Tribunal established under section 16.

3. Objects of the Act

The objects of this Act are to —

- (a) establish the Service;
- (b) recognize the Service as the sole body responsible for carrying out the accreditation of conformity assessment bodies in Kenya;
- (c) establish an internationally recognised accreditation system;
- (d) promote accreditation for the facilitation of trade and the enhancement of health, safety, environmental protection, economic performance and transformation of Kenya; and
- (e) promote the competence and equivalence of accredited bodies.

PART II — ESTABLISHMENT, POWERS AND FUNCTIONS OF THE SERVICE

4. Establishment of the Service

(1) There shall be established a service to be known as the Kenya Accreditation Service.

(2) The Service shall be the successor to the Kenya Accreditation Service established in accordance with the Kenya Accreditation Service Order, 2009 (L.N. No. 55 of 2009).

(3) The Service shall be a body corporate, with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) entering into contracts;
- (b) suing and being sued;
- (c) taking, purchasing or otherwise acquiring, holding or disposing of movable and immovable property;
- (d) borrowing and lending money;
- (e) charging fees for its services; and
- (f) doing or performing all acts necessary for the proper execution of its functions under this Act which may lawfully be done by a body corporate.

5. Headquarters of the Service

The headquarters of the Service shall be in Kenya, at a place designated by the Cabinet Secretary and published in the *Gazette*.

6. Functions of the Service

The functions of the Service shall be to—

- (a) assess and accredit conformity assessment bodies;
- (b) promote accreditation in Kenya;
- (c) promote mutual recognition of the competence of accredited bodies and equivalence of accreditation schemes;
- (d) establish and nurture relations and cooperation with regional and international accreditation bodies, persons, associations and organizations that the Service may consider necessary for the furtherance of the objectives of this Act;
- (e) participate in the formulation and monitoring of national, regional and international accreditation guidelines and standards;
- (f) create public awareness on accreditation, collect and disseminate information on accreditation and conformity assessment matters through advocacy programmes, publication of reports, pamphlets, books, journals or any other publications;
- (g) provide training, and other related services and promote research on accreditation and conformity assessment matters;
- (h) initiate, negotiate, conclude and maintain international mutual recognition agreements relating to its accreditation schemes;
- (i) support the Government in matters relating to mutual recognition agreements on accreditation;
- (j) co-ordinate and liaise with regulators in respect of any matter relating to accreditation;
- (k) obtain and maintain membership to national, regional or international organizations which the Service considers necessary for purposes of achieving its objectives;
- (l) promote recognition and protect the use of the logo and symbols of the Service;
- (m) promote and protect regional and international mutual recognition arrangements and symbols;
- (n) establish, review, and maintain accreditation schemes for conformity assessment bodies that are consistent with international practices, facilitate trade and address needs of industry, consumers, regulators and other relevant entities;
- (o) formulate and implement national guidelines and standards to facilitate accreditation;
- (p) advise the Government on designation of conformity assessment bodies;
- (q) ensure that accredited bodies implement appropriate actions related to their conformity assessment activities;
- (r) establish and maintain, in the prescribed manner, a register of the status of accredited bodies;

- (s) design and issue accreditation certificates and symbols to accredited bodies;
- (t) publish quarterly in the *Gazette*, and on its website, a list of all accredited bodies in the prescribed manner; and
- (u) promote the use of accreditation symbols on certificates or reports issued by conformity assessment bodies.

PART III —THE BOARD AND THE MANAGEMENT OF THE SERVICE

7. Establishment and composition of the Board

(1) The management of the Service shall vest in a Board of Directors which shall consist of—

- (a) a non-executive chairperson appointed by the President on the recommendation of the Cabinet Secretary;
- (b) the Principal Secretary in the ministry for the time being responsible for matters related to accreditation or a designated representative;
- (c) the Principal Secretary in the ministry for the time being responsible for matters related to finance or a designated representative;
- (d) five other members, appointed by the Cabinet Secretary being—
 - (i) two persons with professional qualifications in the fields of science and technology, law, trade, business or industry;
 - (ii) two persons, one with professional qualifications in finance, and another person with professional qualifications in law or human resource management; and
 - (iii) one person with professional qualifications in consumer protection.
- (e) the Chief Executive Officer, who shall be an *ex officio* member.

(2) The persons appointed under subsection (1)(d) shall be subjected to a competitive recruitment process taking into account the recommendations of the relevant professional bodies, gender and regional balance.

(3) The office of a member of the Board may fall vacant if—

- (a) the member resigns in writing—
 - (i) in the case of the chairperson, to the President; or
 - (ii) in the case of any other member, other than an *ex officio* member, to the Cabinet Secretary;
- (b) the member dies;
- (c) the member is adjudged bankrupt;
- (d) the member is convicted of an offence and is sentenced to a term of imprisonment for a period of at least six months without the option of a fine;
- (e) the member has been absent from three consecutive meetings of the Board without reasonable cause; or
- (f) the member is incapacitated by mental or physical illness and is unable to discharge the functions of the office.

(4) The chairperson shall preside at every meeting of the Board and where the chairperson is absent, the members present shall appoint one from their number to preside at that meeting.

(5) The quorum for a meeting of the Board shall be five members.

(6) The conduct of the business of the Board shall be as provided for in the First Schedule and, except as provided in the First Schedule, the Board shall regulate its own procedure.

(7) The members of the Board shall be appointed by notice in the *Gazette* and shall serve for a term of three years which may be renewed for one further term of three years.

8. Committees of the Board

(1) The Board may, from time to time, establish such committees as it may consider appropriate for the better carrying out of its functions.

(2) The Board may hire experts or consultants to assist in its work.

(3) Where the Board establishes a committee under this section, it shall determine the composition of the committee and the rules and procedures that shall be adopted by the committee.

9. Accreditation Advisory Committees

(1) The Service may, subject to the directions of the Board, constitute Accreditation Advisory Committees to—

- (a) advise the Board on technical and scientific matters relating to the operation of accreditation schemes;
- (b) guide on interpretation of technical requirements of international standards and regulatory requirements of specific accreditation schemes;
- (c) formulate or review the technical criteria or other sector specific application requirements related to accreditation schemes;
- (d) develop or review technical criteria adopted by the Service for specific accreditation activities;
- (e) advise on the competence criteria for accreditation assessors and technical experts including identifying relevant proficiency testing programmes applicable to specific accreditation schemes; and
- (f) offer advisory support activities including accreditation assessment reviews, research and other matters as may be required by Service from time to time.

(2) An Accreditation Advisory Committee shall consist of not less than three members, and not more than nine members.

(3) The members of an Accreditation Advisory Committee shall possess academic, scientific or technical expertise and relevant experience in the specific areas of interest required by Service.

(4) A member of an Accreditation Advisory Committee shall be appointed in writing on such terms and conditions as the Board may determine.

(5) The Accreditation Advisory Committee shall be objective, independent and impartial in the performance of its functions.

(6) The conduct of the business and affairs of an Accreditation Advisory Committee shall be as set out in the Second Schedule to this Act.

10. Accreditation Schemes

(1) The Service may establish and maintain such accreditation schemes consistent with international and regional practices taking into account the needs of manufacturers, consumers, regulators and any other relevant stakeholders.

(2) The Service shall maintain on its website, information relevant to each accreditation scheme including applicable requirements or conditions of accreditation.

(3) The Service may make regulations specifying standards and other guidelines necessary for the proper administration of this Act, including the—

- (a) requirements of an accreditation scheme;
- (b) fees applicable to each accreditation scheme;
- (c) fees applicable to accreditation related training, and any other activities undertaken by the Service;
- (d) conditions on the use of the logo and accreditation symbols of the Service, including symbols of regional or international accreditation bodies; and
- (e) any other matter which the Service may consider necessary.

PART IV — ACCREDITATION

11. Application for accreditation

(1) A conformity assessment body that seeks to be accredited shall apply to the Service for accreditation in the prescribed manner.

(2) The Service shall process an application submitted under subsection (1) within sixty days from the date of receipt of the application.

(3) Where the Service approves the application for accreditation, the Service shall inform the applicant in writing, and undertake an accreditation assessment in accordance with the requirements of the relevant accreditation scheme.

(4) Where the Service declines an application submitted under subsection (1), the Service shall notify the applicant in writing upon conclusion of the evaluation exercise setting out the reasons for the decision.

12. Accreditation decisions of the Service

(1) The Service may, subject to the directions of the Board, set rules and guidelines for granting, renewing, maintaining, reducing, extending, suspending or withdrawing accreditation.

(2) Where the Service is satisfied with the outcome of an accreditation assessment, and upon payment of the prescribed fees, the Service may grant, renew, maintain, reduce or extend accreditation to a conformity assessment body.

(3) Where the Service grants, renews, maintains, reduces or extends the accreditation of a conformity assessment body, the Service shall notify the conformity assessment body and issue an accreditation certificate within fourteen days.

(4) A certificate issued under subsection (3) shall be accompanied by—

- (a) a schedule specifying the scope of accreditation;
- (b) an outline of prescribed conditions on the use of accreditation symbols and related claims; and
- (c) any other terms as may be determined by the Service.

(5) Where the Service declines, suspends or withdraws accreditation to a conformity assessment body, the Service shall, within fourteen days, notify the conformity assessment body in writing setting out the reasons for its decisions.

(6) The Service may withdraw an accreditation from a conformity assessment body without having first suspended the accreditation, where the—

- (a) accreditation was obtained by fraud;
- (b) conformity assessment body—
 - (i) becomes insolvent;
 - (ii) goes into liquidation; or
 - (iii) is ordered to be wound up by a court of competent jurisdiction;
- (c) management systems of the conformity assessment body have failed.

(7) The Service may suspend or withdraw the accreditation of a conformity assessment body where there is a breach of the administrative procedures or guidelines issued by the Service.

13. Accreditation status, certificates, symbols and claims

(1) The accreditation status of a conformity assessment body, or claims made or representational statements made, shall be confirmed only through the—

- (a) accreditation certificate and the accompanying schedule issued by the Service;
- (b) register of accredited bodies published in the *Gazette* and maintained on the website of the Service; and
- (c) accreditation symbol issued by the Service and displayed on certificates or reports issued by an accredited body.

(2) An accreditation certificate issued under this Act shall be valid only for the period prescribed in the certificate.

(3) The seal of the Service shall be affixed on an accreditation certificate and shall be authenticated by the signature of the Chief Executive Officer or a person authorized in that behalf by a resolution of the Board.

(4) The accreditation certificate and rights to use an accreditation symbol shall be the property of the Service and shall be surrendered to the Service whenever it is required to do so.

(5) The Service may impose such conditions, as it considers necessary, on the use of an accreditation certificate, accreditation symbol, and a claim of accreditation status by an accredited body.

(6) The accredited body may use the accreditation symbol in relation to the scope of accreditation specified in the relevant schedule, provided that the accreditation granted under this Act shall be in force.

(7) An accredited body commits an offence under this Act, where the accredited body—

- (a) misuses its accreditation status;
- (b) misrepresents its accreditation entry date or expiry date;
- (c) makes a claim that is outside the scope for which the body is accredited;
- (d) gives false information on the location of the accredited facility; or
- (e) makes other misrepresentation relating to its status of accreditation.

14. Maintenance of accreditation

(1) An accredited body shall comply with the provisions of this Act, and any other conditions prescribed by the Service from time to time.

(2) An accredited body shall inform the Service promptly of any changes that may affect its accreditation status or the operations of the accredited body.

15. Suspension or withdrawal of accreditation

(1) The Service may suspend an accredited body from offering accreditation services for the period specified in the notice of suspension or until such earlier time as the Service may determine.

Provided that a suspension shall not last for a period exceeding six months.

(2) The Service may suspend an accreditation body where the accredited body—

- (a) contravenes the conditions imposed by the Service;
- (b) provides false or misleading information to the Service;
- (c) is no longer fit to hold an accreditation;
- (d) fails to comply with the directions of the Service;
- (e) contravenes any provisions of this Act; or
- (f) fails to pay any fees prescribed under this Act.

(3) Where an accreditation is suspended on account of non-payment of the prescribed fees, the suspension shall be lifted where the fee is paid within thirty days from the date of the notice of suspension.

(4) The Service may withdraw the accreditation of a conformity assessment body where the body is suspended for non-payment of the prescribed fee and it fails to pay the fees within the period specified under sub-section (3).

(5) The Service may suspend or withdraw an accreditation upon the request of an accredited body.

(6) Where the Service has suspended or withdrawn an accreditation, it shall, within fourteen days of the suspension or withdrawal publish the fact of the changed accreditation status on its website.

16. Accreditation Appeals Tribunal

(1) There is established a Tribunal to be known as the Accreditation Appeals Tribunal, which shall hear and determine appeals emanating from the decisions of the Service.

(2) The Accreditation Appeals Tribunal shall consist of five members being—

- (a) a Chairperson appointed competitively by the Cabinet Secretary from amongst persons qualified to be judges of the High Court; and
- (b) four other persons who possess expertise and knowledge in matters relating to accreditation, conformity assessment, standardization or regulatory activities.

(3) The members under subsection (2)(b) shall be appointed competitively by the Cabinet Secretary from amongst persons who—

- (a) hold a university degree in law or science and technology; and
- (b) possess at least seven years relevant experience in their areas of expertise.

(4) Except as provided in the Third Schedule, the Accreditation Appeals Tribunal shall regulate its own procedure.

17. Appeals to the Accreditation Appeals Tribunal

(1) An accredited body that is aggrieved by a decision of the Service may, by notice in writing to the Chief Executive Officer and upon payment of the prescribed fees, appeal against the decision within twenty-one days of being notified of the decision.

(2) A notice of appeal under this section shall set out the grounds of the appeal.

(3) The Chief Executive Officer shall, within seven days of receipt of the notice under subsection (2), forward the notice to the Accreditation Appeals Tribunal.

18. Awards of the Accreditation Appeals Tribunal

(1) The Accreditation Appeals Tribunal shall consider the notice of appeal and the response of the Service before making an award.

(2) An award of the Accreditation Appeals Tribunal may—

- (a) confirm the decision of the Service;
- (b) vary the decision of the Service;
- (c) direct the Service to carry out a fresh evaluation of the application or undertake a fresh assessment of the conformity assessment body; or
- (d) issue other orders it may consider necessary including an order as to costs.

(3) Where an appeal has been filed against a decision of the Service, the decision of the Service shall stand suspended until the appeal has been heard and determined by the Accreditation Appeals Tribunal.

(4) The Accreditation Appeals Tribunal may direct the taxing of costs as may be prescribed under this Act.

19. Appeals against the awards of the Accreditation Appeals Tribunal

(1) A party who is aggrieved by an award of the Accreditation Appeals Tribunal may appeal against the award to the High Court.

(2) An award of the Accreditation Appeals Tribunal shall stand suspended where an appeal against the award has been made to the High Court.

(3) After hearing an appeal under this section, the High Court may—

- (a) confirm the award of the Accreditation Appeals Tribunal;
- (b) review the award of the Accreditation Appeals Tribunal;
- (c) remit the proceedings of the appeal to the Accreditation Appeals Tribunal and direct the Tribunal to review the award; or
- (d) make any other order as it may consider necessary, including an order as to costs.

20. Conduct of the business and affairs of the Accreditation Appeals Tribunal

(1) The conduct of the business and affairs of the Accreditation Appeals Tribunal shall be as set out in the Third Schedule to this Act.

21. The Chief Executive Officer

(1) There shall be a Chief Executive Officer of the Service appointed by the Cabinet Secretary on the recommendation of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) has a post-graduate degree in—
 - (i) science;
 - (ii) information technology; or
 - (iii) business administration;
- (b) has at least ten years' relevant professional experience of which five shall have been in a senior management position;
- (c) satisfies the requirements of Chapter Six of the Constitution;
- (d) does not hold a public office; and
- (e) is otherwise not disqualified by any other written law.

(3) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment to one further term of three years.

(4) The Chief Executive Officer shall, subject to the general directions of the Board, be responsible for the day to day management of the Service, the exercise of its powers and the discharge and performance of its functions.

(5) The Cabinet Secretary, on the written recommendation of the Board and on the grounds stipulated under subsection (6), may revoke the appointment of the Chief Executive Officer at any time.

(6) The appointment of the Chief Executive Officer may be revoked on the grounds of—

- (a) gross misconduct;
- (b) insubordination;
- (c) violation of any of the terms of the contract of appointment;
- (d) breach of chapter six of the Constitution;
- (e) failure to comply with the provisions of this Act; or
- (f) conviction of an offence under any of the laws of Kenya.

(7) Where the Board recommends the revocation of the appointment of the Chief Executive officer, the recommendation shall be valid only if it is supported by at least two-thirds of the members of the Board.

22. The Corporation Secretary

(1) There shall be a Corporation Secretary who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) A person shall be qualified for appointment as a Corporation Secretary, if the person holds a degree in law from a university recognized in Kenya and is a registered Certified Public Secretary with at least seven years relevant experience.

(3) The Corporation Secretary shall—

- (a) be the Secretary to the Board;
- (b) record and keep minutes and other records of the Board;
- (c) have custody of the seal of the Board; and
- (d) carry out such other functions as may be assigned by the Board or the Chief Executive Officer, from time to time.

(4) The Corporation Secretary shall be responsible to the Chief Executive Officer.

23. Staff of the Service

(1) The Service may appoint such other staff as it considers necessary for the exercise of its powers and discharge of its functions.

(2) The Staff of the Service shall be appointed on such terms and conditions as shall be determined by the Board on the recommendations of the Salaries and Remuneration Commission.

(3) The Service shall ensure that the appointment of its staff reflects the ethnic, gender and regional diversity of the people of Kenya.

24. Confidentiality

(1) Any person who is or who has been involved in the performance of any function of the Service, an Accreditation Advisory Committee or the Accreditation Appeals Tribunal, shall not disclose any information in the performance of that function, except—

- (a) to a person authorized to have that information for the performance of a function under this Act;
- (b) where that person is authorized under this Act to disclose that information;
- (c) where that person discloses that information in accordance with a provision of any written law or an order of a court of competent jurisdiction; or
- (d) where the information is disclosed by or on the authority of the Cabinet Secretary, the Board or the Chief Executive Officer.

(2) A member of the Board, or an officer or agent of the Service shall, in the performance of any function or exercise of any power under this Act, preserve the confidentiality of any matter coming to the knowledge of that member, officer or agent.

(3) A member of the Board, or an officer or agent of the Service shall not, without any reasonable cause—

- (a) disclose any confidential information to any person; or
- (b) permit an unauthorized person to gain access to any information in the possession, custody or control of the Service.

(4) Any person who contravenes the provisions of this section commits an offence.

25. Protection from personal liability

No matter or thing done or omitted to be done by a member of the Board, or an officer or agent of the Service, if the matter or thing is done or omitted in good faith in the execution of the powers and the performance of the functions of the Service, shall render the member, officer or agent, or any other person's action on the member's, officer's or agent's direction, personally liable to any action, claim or demand whatsoever.

26. Common seal of the Service and execution of documents

(1) The common seal of the Service shall be kept in the custody of the Corporation Secretary and shall not be affixed to any instrument or document except as the Chief Executive Officer may authorize.

(2) The common seal of the Service shall be authenticated by the signature of the Chief Executive Officer or any other person authorized in that behalf by a resolution of the Board.

27. Remuneration of members of the Board, committees, and the Accreditation Appeals Tribunal

The Service shall pay such remuneration and allowances to the members of the Board, committees, and the members of the Accreditation Appeals Tribunal as approved by the Cabinet Secretary upon the recommendation of the Salaries and Remuneration Commission.

PART V- FINANCIAL PROVISIONS

28. The General Fund and investments

(1) There is established a fund of the Service to be known as the General Fund.

(2) The Fund shall be the successor of the General Fund established under the Kenya Accreditation Service Order, 2009.

(3) The Fund shall vest in the Service.

(4) The Fund shall consist of such monies as—

- (a) were held by the former Fund;
- (b) may accrue or vest to the Service in the exercise of its powers or the performance of its functions under this Act;
- (c) may be prescribed as fees or charges payable to the Service under the Act;
- (d) may be received as grants, gifts or donations;
- (e) may be appropriated for the purposes of the Service; and
- (f) may be borrowed or raised by the Service for the purpose of meeting any of its obligations or discharging any of its duties.

(5) The Service may invest any of its funds not immediately required for its purposes—

- (a) as the Service may be directed by the Cabinet Secretary for the National Treasury; or
- (b) in such manner as may be approved by the Cabinet Secretary.

29. Financial year

The financial year of the Service shall be the period of twelve months ending on the 30th June.

30. Annual estimates

(1) The Board shall, before the commencement of each financial year, cause to be prepared and shall approve the estimates of the revenues and expenditures of the Service for that financial year.

(2) The estimates of revenues and expenditures of the Service shall, in particular, provide for the—

- (a) payment of salaries, allowances and other charges in respect of the staff of the Service;
- (b) payment of pensions, gratuities and other retirement benefits which shall be payable out of the funds of the Service;

- (c) training, research, investor education and securities industry development activities of the Service;
- (d) acquisition, maintenance, repair and replacement of equipment and other movable and immovable property of the Service;
- (e) creation of reserve funds to meet the future or contingent liabilities of the Service; and
- (f) expenditure incurred by the Service in the exercise of its powers and the performance of its functions.

(3) The Service shall submit the estimates of revenues and expenditures of the Service to the Cabinet Secretary for approval.

31. Accounts and audit

(1) The Board of the Service shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Service in accordance with the Public Finance Management Act (No. 18 of 2012).

(2) The accounts of the Service shall be audited and reported on in accordance with the provisions of Article 226 and 229 of the Constitution and the Public Audit Act (No. 34 of 2015).

32. Exemptions from stamp duty

No duty shall be chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by or on behalf of the Service for which the Service would ordinarily be liable to pay.

33. General offence and penalty

(1) A conformity assessment body not being accredited by the Service which makes any claim or uses any accreditation symbol in relation to any goods, processes, services, or facilities which may imply that the conformity assessment body is accredited when not being so accredited, commits an offence under this Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings.

(2) A person who is convicted of an offence under this Act for which no other penalty is prescribed shall be liable, upon conviction, to imprisonment for a term not exceeding six months or a fine not exceeding five hundred thousand shillings or to both.

PART VI — PROVISIONS ON DELEGATED POWERS

34. Regulations

(1) The Cabinet Secretary may make regulations for better carrying into effect the provisions of this Act and without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) the scope of activity for which the Service may grant accreditation;
- (b) the functions of accredited conformity assessment bodies; and
- (c) any other matter necessary for the proper administration of this Act.

(2) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;

- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power are those found in—
 - (i) the Statutory Instruments Act (No. 23 of 2013);
 - (ii) the Interpretation and General Provisions Act (Cap. 2);
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

PART VII — REPEAL AND TRANSITIONAL PROVISIONS

35. Transitional provisions

(1) The members of the Board of Directors of the Service appointed under the Kenya Accreditation Service Order, 2009 (L.N. 55/2009) hereinafter referred to as the "former Service", who qualify under this Act, shall continue to hold office as members of the Board until the expiry of the remainder of their terms of office.

(2) Any Regulation made or other instrument issued under the Kenya Accreditation Service Order, 2009, shall continue to have effect as if the Regulation or instrument were made or issued under this Act.

(3) All the property, assets, rights, liabilities, obligations or agreements vested in, acquired, incurred or entered into by or on behalf of the former Service, shall be considered to have been vested in, acquired, incurred or entered into by the Service under this Act.

(4) All persons who, before the commencement of this Act, were employees of the former Service shall, at the commencement of this Act, be considered to be the staff of the Service under this Act.

(5) Any waiver, exemption or no objection granted or any enforcement action taken against any person under the Kenya Accreditation Service Order (L.N. 55/2009), shall continue to have effect as if that waiver, exemption or no objection granted or any enforcement action taken against any person was given or imposed under this Act.

(6) Any accreditation certificate granted under the Kenya Accreditation Service Order, 2009 (L.N. 55/2009), shall continue to be valid under this Act until the expiry of its validity period.

PART VIII — CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

36. Disclosure of interest

(1) Where a member is directly or indirectly interested in any matter before the Board and is present at a meeting of the Board at which the matter shall be considered, deliberated or voted on, that member shall, at that meeting as soon as is practicable after the meeting has commenced, but before any deliberations have occurred, disclose that interest and shall not take part in the consideration, deliberations or votes on the matter and shall not be counted in the quorum of the meeting during the consideration, deliberation or vote on that matter.

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

FIRST SCHEDULE

PROCEDURE FOR MEETINGS OF THE BOARD OF DIRECTORS

[Section 75(5).]

1. The Board shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting of the Board and the date of the next meeting.
2. Despite the provisions of paragraph 1, the Chairperson shall, upon a written request of at least five members of the Board, convene a special meeting of the Board for the transaction of the Business of the Board.
3. Unless three-quarters of the members of the Board otherwise agree, the chairperson shall give a notice of fourteen days of every meeting of the Board.
4. No meeting of the Board may be held at any place except the registered office of the Service:

Provided that the Board may, in writing, authorise a meeting of the Board to be held at a place that is not a registered office of the Service.
5. The Chairperson shall preside at every meeting of the Board at which the Chairperson is present:

Provided that in the absence of the Chairperson, the members present shall select one of their number to preside at that meeting.
6. A decision on, any matter before the Board shall be made unanimously, but where a unanimous decision cannot be made, the members present shall decide the matter by a majority vote and in case of a tied vote the Chairperson or the person selected to act as the Chairperson shall cast the deciding vote.
7. The Board shall maintain written minutes of each meeting.

SECOND SCHEDULE

PROCEEDINGS BEFORE THE ACCREDITATION ADVISORY COMMITTEE

[Section 9(6).]

1. The Accreditation Advisory Committee shall meet at least four times in every year.
2. The Service shall, at the commencement of each year, publish a calendar of events setting out the dates and times of the meetings and related activities of the Accreditation Advisory Committee:

Provided that the Secretary shall give all members a five days' notice incorporating the agenda of the Accreditation Advisory Committee meeting.

3. A special meeting of the Accreditation Advisory Committee may be held on a date and at a time determined by the Accreditation Advisory Committee or as the Secretary in consultation with the members of the Accreditation Advisory Committee may determine.

4. The Members of the Accreditation Advisory Committee shall at their first meeting elect a Chairperson and Vice Chairperson from amongst their number.

5. A decision on any matter before the Accreditation Advisory Committee shall be by consensus:

Provided that where there is no consensus, the members present shall decide the matter by a majority vote, in the case of a tie, the Chairperson shall have a casting vote.

6. Each Accreditation Advisory Committee shall maintain written minutes of its meetings and the minutes shall be kept in the custody of the Secretary.

7. The Secretary of the Accreditation Advisory Committee may, through written consultation with the members of the Accreditation Advisory Committee, take action on any urgent matter, which cannot wait to be considered at a meeting of the Accreditation Advisory Committee and report at the next meeting of the Accreditation Advisory Committee.

THIRD SCHEDULE

PROCEEDINGS BEFORE THE ACCREDITATION APPEALS TRIBUNAL

[Section 16(4).]

1. The Accreditation Appeals Tribunal may, to avoid delay or unnecessary expense or for any justifiable reason, receive evidence by affidavit and may specify the period within which it may hear evidence in person from witnesses.

2. The Accreditation Appeals Tribunal may when making an award under this Act, consider any evidence that it considers relevant to the matter before it:

Provided that the evidence shall not be inadmissible under the Evidence Act (Cap. 80).

3. A party to an appeal before the Accreditation Appeals Tribunal may be represented by an Advocate or any other person as may be prescribed by the Tribunal.

4. All summonses, notices or other documents issued under the hand of the Chairperson of the Accreditation Appeals Tribunal shall be considered to have been issued by the Tribunal.

5. The Accreditation Appeals Tribunal shall appoint the place and time for its sitting.

6. The proceedings of the Accreditation Appeals Tribunal shall be open to the public except where the Tribunal, with reasonable cause, directs otherwise.

7. The quorum of an Accreditation Appeals Tribunal shall be the chairperson and two other members.

8. (1) Where a member has a direct or indirect interest in any appeal or other matter before the Accreditation Appeals Tribunal, and is present at a meeting of the Tribunal at which the appeal shall be determined, the member shall, as soon as is practicable after the meeting has commenced, but before any deliberations have occurred, disclose that fact and shall be excluded from that meeting.

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

9. Where the Accreditation Appeals Tribunal has made an award, it shall, within seven days notify the parties of the making of the award.
