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LAWS OF KENYA

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**NAIROBI INTERNATIONAL FINANCIAL CENTRE ACT**

NO. 25 OF 2017

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**NAIROBI INTERNATIONAL FINANCIAL CENTRE ACT**

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CONDUCT OF BUSINESS OF THE BOARD

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**NO. 25 OF 2017**

**NAIROBI INTERNATIONAL FINANCIAL CENTRE ACT**

[Date of assent: 21st July, 2017.]

[Date of commencement: 16th August, 2017.]

**AN ACT of Parliament to provide for a legal framework to facilitate and support the development of an efficient and globally competitive financial services sector that generates high levels of national savings and investments through the establishment of the Nairobi International Financial Centre, the Nairobi International Financial Centre Authority, and for connected purposes**

[Act No. 25 of 2017.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Nairobi International Financial Centre Act, 2017.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**"Authority"** means the Nairobi International Financial Centre Authority established under section 5;

**"Board"** means the Board of directors of the Authority constituted under section 8;

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

**"Centre"** means the Nairobi International Financial Centre established under section 4;

**"Council"** means the Steering Council established under section 19;

**"NIFC firm"** means a person certified as such by the Authority under section 28 (4);

**"person"** includes a company, association or other body of persons whether incorporated or unincorporated;

**"regulatory authority"** includes the Central Bank of Kenya, the Capital Markets Authority, the Insurance Regulatory Authority, the Retirement Benefits Authority, and the Sacco Societies Regulatory Authority or their successors thereof;

**"Tribunal"** means the Financial Centre Tribunal established under section 35; and

**"qualified activity"** refers to an activity designated as such by the Cabinet Secretary under section 27.

**3. Act to prevail**

Where there is any conflict or inconsistency between this Act and the provisions of any other Act in matters relating to the purpose of this Act, this Act shall prevail.

PART II — ESTABLISHMENT OF THE CENTRE AND AUTHORITY

**4. Establishment of the Centre**

(1) There is established the Nairobi International Financial Centre.

(2) The Centre shall be an operating framework managed by the Authority in order to facilitate and support the development of an efficient and globally competitive financial services sector in Kenya.

**5. Establishment of the Authority**

(1) There is established the Nairobi International Financial Centre Authority.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing such other acts necessary for the proper performance of the functions of the Authority.

(3) The Authority shall be the successor to the Nairobi International Financial Centre Authority established under the Nairobi International Financial Centre Authority Order, (L.N. No. 44 of 2014).

(4) Subject to this Act, all rights, duties, obligations, assets and liabilities of the Nairobi International Financial Centre Authority existing at the commencement of this Act shall be automatically and fully transferred to the Authority.

**6. Objectives of the Authority**

The objectives of the Authority shall be to—

- (a) establish and maintain an efficient operating framework in order to attract and retain firms;
- (b) develop and recommend strategies and incentive structures in collaboration with relevant agencies in order to attract firms to be Nairobi International Financial Centre firms (hereinafter referred to as NIFC firms); and
- (c) review and recommend, in collaboration with the relevant regulatory authorities developments to the legal and regulatory framework in order to develop Kenya as an internationally competitive financial centre.

**7. Powers and functions of the Authority**

In order to realise its objectives, the Authority shall have powers and functions to—

- (a) formulate and implement policies relating to the establishment, operations and administration of the Centre;
- (b) develop, in collaboration with other relevant agencies, the necessary infrastructure to support the conduct of qualified activities;

- (c) certify firms to conduct activities under the Centre;
- (d) review and recommend in consultation with the relevant agencies, the development of legal, the regulatory and institutional framework including mechanisms for judicial redress for the purposes of aligning them to the needs of the Centre;
- (e) impose administrative penalties for breach of any rules, regulations or directives;
- (f) determine, impose and levy, in consultation with the Cabinet Secretary, any rates, charges or fees for any services rendered by the Authority;
- (g) promote the Centre as the leading operating framework for financial services and related activities;
- (h) co-operate and enter into association and agreements with local and international bodies, institutions and organizations to support the functions of the Authority; and
- (i) undertake any other activity necessary for the fulfilment of its objectives under this Act.

### 8. Board of the Authority

(1) The management of the Authority shall vest in a board of directors which shall comprise—

- (a) a non-executive chairperson appointed by the President;
- (b) the Cabinet Secretary responsible for matters relating to finance, or a representative appointed in writing by the Cabinet Secretary;
- (c) the Cabinet Secretary responsible for matters relating to international trade, or a representative appointed in writing by the Cabinet Secretary;
- (d) the Attorney-General, or a representative appointed in writing by the Attorney-General;
- (e) four other persons with relevant international financial services experience appointed by the Cabinet Secretary; and
- (f) the Chief Executive Officer who shall be an *ex-officio* member with no right to vote.

(2) A person qualifies to be appointed as the chairperson under subsection (1)

(a) if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least fifteen years' experience at a senior management level in—
  - (i) finance, economics, banking, insurance or capital markets;
  - (ii) corporate or financial services law; or
  - (iii) any other field that is relevant to the functions of the Authority; and
- (c) meets the requirements of Chapter Six of the Constitution of Kenya.

### **9. Term of office**

(1) The Chairperson and members of the Board appointed under section 8(1) (a) and (e) respectively shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) The appointment of members of the Board shall be done in such a manner as to ensure that the terms of the members appointed do not lapse at the same time and that there is continuity of service.

### **10. Procedure of Board meetings**

(1) The procedures for the conduct of business and affairs of the Board shall be as set out in the Schedule.

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

### **11. Functions and powers of the Board**

(1) The Board shall have all the powers necessary for the performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Board shall have the powers to—

- (a) lay down the general policies and plans for the Authority in accordance with international best practices;
- (b) prepare the annual budget of the Authority for the purpose of funding the administrative activities of the Centre;
- (c) administer the assets and funds of the Authority in such a manner and for such purposes as shall promote the best interests of the Authority;
- (d) receive grants, donations or any other moneys on behalf of the Authority and make legitimate disbursements therefrom;
- (e) open such banking accounts for the funds of the Authority as may be necessary;
- (f) ensure the Authority is run at all times in accordance with this Act and best international practices; and
- (g) perform any other function necessary to achieve the objectives of the Authority.

### **12. Delegation by the Board**

The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Authority, the exercise of any powers or the performance of any functions or duties of the Board under this Act or any other written law.

### **13. Remuneration of Board members**

The chairperson and members of the Board shall be paid such remuneration or allowances as the Authority may, in consultation with the Salaries and Remuneration Commission, determine.

### **14. Chief Executive Officer**

(1) There shall be a Chief Executive Officer of the Authority who shall be competitively recruited and appointed by the Cabinet Secretary on the recommendation of the Board.



(2) The Chief Executive Officer shall serve on such terms and conditions of employment as the Board may, in consultation with the Cabinet Secretary, determine.

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

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience at a senior management level in—
  - (i) banking, insurance or capital markets;
  - (ii) finance or economics;
  - (iii) corporate or financial services law; or
  - (iv) such other field that is relevant to the functions of the Authority;
- (c) has relevant experience in the development of the financial services sector; and
- (d) meets the requirements of Chapter Six of the Constitution of Kenya.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day-to-day management of the Authority.

(5) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.

#### **15. Staff of the Authority**

(1) The Authority may appoint such staff as are necessary for the performance of its functions under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Authority may, in consultation with the Salaries and Remuneration Commission, determine.

#### **16. Protection from personal liability**

No matter or thing done by any member of the Board or by any officer, employee, agent or servant of the Authority or Tribunal shall, if the act or omission was done in good faith for the purpose of performing the functions of the Authority or Tribunal under this Act, render the person liable for any action, claim or demand.

#### **17. Confidentiality**

(1) A director, officer, employee or agent of the Authority or any person who for any reason has access to any record, document, material or information relating to the affairs of the Authority which that person acquires through the performance of his or her duties or the exercise of his or her functions shall not divulge, use for personal gain, publish or otherwise disclose to any person such document, material or information unless the disclosure is required—

- (a) to be disclosed under any law;
- (b) for the performance of his or her duties or the exercise of his or her functions under this Act; or
- (c) by a court of law.

(2) This section shall not apply to any document, material or information which at the time of disclosure is, or has already been made lawfully available to the public.

(3) A person who has any document, material or information which to his or her knowledge has been disclosed in contravention of subsection (1) shall not disclose, in any manner, the document, material or information to any other person.

(4) A person who contravenes subsection (1) or (3) shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

#### **18. Common seal**

(1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subsection (2), the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

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

### **PART III — ESTABLISHMENT OF STEERING COUNCIL**

#### **19. Establishment of the Steering Council**

(1) There is established a Steering Council which shall consist of the—

- (a) President as the chairperson;
- (b) Deputy President as the deputy chairperson;
- (c) Cabinet Secretary responsible for matters relating to finance;
- (d) Attorney-General;
- (e) Governor of the Central Bank of Kenya;
- (f) Chief Executive Officer of the Capital Markets Authority;
- (g) Chief Executive Officer of the Insurance Regulatory Authority;
- (h) Chief Executive Officer of the Retirement Benefits Authority; and
- (i) Chairperson of the Authority.

(2) The Authority shall provide secretariat services to the Council.

(3) The Council may from time to time, co-opt any person to advise on a specified matter.

(4) The Council—

- (a) shall review the progress of the Centre, provide direction and address any challenges in the development of the Centre and the overall financial services sector in Kenya; and
- (b) may, from time to time, give such directions to any person which the Council considers necessary in order to achieve the objectives of this Act.

(5) The Council shall meet at least three times in a year and shall regulate its own procedure.

#### PART IV — FINANCIAL PROVISIONS

##### **20. Funds of the Authority**

The funds of the Authority shall consist of—

- (a) such monies or assets which may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) any monies which may become payable to the Authority pursuant to this Act or any other written law;
- (c) monies as may be appropriated by the National Assembly for the purposes of the Authority; and
- (d) all monies from any other source provided, donated or lent to the Authority.

##### **21. Investment of funds**

(1) The Authority may invest any of its funds in securities in which for the time being trustees may by law invest in trust funds, or in any other securities which the National Treasury may, from time to time approve.

(2) The Authority may place or deposit with any bank as it may determine, any monies not immediately required for the purposes of the Authority.

##### **22. Financial year**

The financial year of the Authority shall be the period of twelve months commencing on the first of July and ending on thirtieth of June in each year.

##### **23. Annual estimates**

(1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Authority for the financial year concerned, and in particular, shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the Board and staff of the Authority;
- (b) rental expenses for the premises of the Authority;
- (c) payment of pensions, gratuities and other charges in respect of retirement benefits to the staff of the Authority which are payable out of the funds of the Authority;
- (d) effective development and promotion of the Centre in Kenya and overseas;
- (e) running of the certification, registry, dispute resolution and external entity coordination activities of the Authority;
- (f) proper maintenance, repair and replacement of equipment and other movable property of the Authority; and
- (g) payment of any other costs as may be incurred by the Authority.

(3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate and shall submit the same to the Cabinet Secretary for approval.

#### **24. Accounts and audit**

(1) The Board shall cause to be kept proper books and records of accounts of income, expenditure, assets and liabilities of the Authority.

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

- (a) a statement of income and expenditure of the Authority during the year;
- (b) a statement of assets and liabilities of the Authority on the last day of that year; and
- (c) a funds flow statement during that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015 (No. 34 of 2015).

#### **25. Annual report**

(1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary, an annual report for the immediate preceding financial year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as is practicable.

### **PART V — CERTIFICATION OF FIRMS**

#### **26. Restriction on carrying out qualified activities**

(1) A person shall not conduct any qualified activity as an NIFC firm or hold itself out as such unless that person is certified by the Authority under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

(3) Where the offence is committed by a body corporate, the body corporate shall be liable on conviction to a fine not exceeding ten million shillings.

#### **27. Qualified activities**

(1) A certified firm may conduct any business activity which the Cabinet Secretary may designate in the Gazette as a qualified activity.

(2) Despite subsection (1), a person shall not conduct a qualified activity for which a licence from a regulatory authority is required, unless that person has obtained the appropriate licence from the regulatory authority.

#### **28. Application for certification**

(1) A person who intends to operate as an NIFC firm shall apply to the Authority, in the prescribed form, to be certified as such.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee and any other additional information as the Authority may require.

(3) The Authority shall, in considering an application for certification under subsection (1), be satisfied as to the ability of the applicant to meet the prescribed conditions for certification in line with the objectives of the Centre.

(4) The Authority may—

- (a) subject to the payment of the prescribed fee and to such conditions as the Authority may consider necessary, certify a firm to operate as an NIFC firm; or
- (b) decline to certify a firm.

(5) Where the Authority declines to certify a firm under subsection 4(b), the Authority shall—

- (a) notify the applicant of its decision to do so setting out the reasons for the decline; and
- (b) grant the applicant an opportunity to be heard.

(6) A certification granted under this Act shall remain in force until—

- (a) withdrawn or suspended by the Authority; or
- (b) voluntarily surrendered by the firm.

(7) An NIFC firm shall pay an annual fee as the Authority may prescribe from time to time.

(8) The Authority may—

- (a) impose such fees as are necessary in relation to NIFC firms; and
- (b) prescribe different fees in respect of different classes of NIFC firms or activities carried out by such firms.

## **29. Withdrawal or suspension of certification**

(1) The Authority may withdraw the certification of a firm if—

- (a) the Authority is satisfied that any information furnished in connection with an application for certification was false or misleading;
- (b) the firm has contravened or failed to comply with this Act, any direction or guideline issued or condition attached to the certification;
- (c) the firm has engaged in a prohibited activity;
- (d) the regulatory authority has withdrawn or revoked the firm's licence;
- (e) the certified firm has conducted its affairs in a manner which threatens the interests of its customers;
- (f) the certified firm is in violation of any other law; or
- (g) it is in the interest of the public to do so.

(2) The Authority may, instead of withdrawing a certification under subsection (1), suspend the certification for a specified period or impose conditions or restrictions on the certification.

(3) Where the Authority withdraws a certification under subsection (1), the Authority shall inform the relevant regulatory authority of its decision to do so and the firm shall immediately lose its status as an NIFC firm.

(4) Where the Authority suspends or imposes conditions on the certification under subsection (2), the Authority shall inform the relevant regulatory authority of its decision to do so setting out the period of suspension and the conditions imposed.

(5) The Authority shall not withdraw or suspend a certification under this section without first giving that person an opportunity to be heard.

### **30. Register of NIFC firms**

(1) The Authority shall keep a register of all NIFC firms.

(2) The Authority shall make public the register kept under subsection (1) and any other information relating to the NIFC firms which the Authority considers appropriate by placing it on the Authority's website.

### **31. Inspection of NIFC firms**

The Authority may, in collaboration with the relevant regulatory authority, cause an inspection to be made by an authorized person, of an NIFC firm and its books and records to ascertain if the NIFC firm continues to meet the conditions of certification.

### **32. Rights and benefits for NIFC firms**

Despite any provision to the contrary in any other law or regulation, an NIFC firm shall, subject to the provisions of this Act or regulations—

- (a) not be subject to any nationalisation or expropriation measures or any restrictions on private ownership;
- (b) have freedom to repatriate profits and realise investments;
- (c) have the freedom to recruit and employ staff of their choice on such terms as they wish to agree, subject to work permit provisions and any international treaty obligations entered into by the Government in respect of the terms of employment of employees; and
- (d) be capable of being owned up to one hundred percent by persons who are not nationals of, or resident in, Kenya.

### **33. Settlement of disputes**

(1) Where there is a dispute between the Authority and an NIFC firm arising out of or in connection with the rights and benefits conferred by section 32, the dispute shall be settled by arbitration, and, unless otherwise agreed by the parties, by a sole arbitrator, to be appointed by the Registrar of the Nairobi Centre for International Arbitration and any award, order or determination of or by such arbitrator shall be final and binding on all parties.

(2) The dispute referred to the arbitrator appointed by the Registrar under subsection (1) shall be administered in accordance with the Rules for arbitration of the Nairobi Centre for International Arbitration.

### **34. Rules and guidelines**

Without prejudice to the generality of the powers conferred under this Act, the Authority may formulate rules or issue guidelines as may be required in order to perform its functions under this Act.

## **PART VI — THE FINANCIAL CENTRE TRIBUNAL**

### **35. Establishment of Tribunal**

(1) There is established an appeals tribunal to be known as the Financial Centre Tribunal which shall consist of the following members appointed by the Judicial Service Commission—

- (a) a Chairperson with ten years' experience in adjudicating financial services and regulatory disputes; and
- (b) four other members with seven years' experience in the financial services sector.

(2) The Chairperson and the members of the Tribunal appointed under subsection (1) shall—

- (a) be of good character; and
- (b) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) The Chairperson and members of the Tribunal shall be appointed for a term of three years renewable for one further term of three years.

(4) The appointment of members to the Tribunal shall be done in such a manner as to ensure that the terms of the members appointed do not lapse at the same time and that there is continuity of service.

(5) The Chairperson and any member of the Tribunal may be removed from office if the Chairperson or member—

- (a) becomes incapable through ill-health of effectively performing the duties of his or her office;
- (b) accepts any position of employment the holding of which conflicts with his or her role in the Tribunal;
- (c) is declared bankrupt;
- (d) is convicted of a criminal offence;
- (e) fails to attend three consecutive meetings of the Tribunal without the permission of the Tribunal;
- (f) resigns; or
- (g) dies.

(6) The Chairperson and members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission from time to time, determine.

(7) The Tribunal shall have jurisdiction to hear and determine appeals against any decision or order of the Authority.

(8) In determining an appeal, the Tribunal may affirm, quash or refer the decision or order back to the Authority for reconsideration.

### **36. Secretary to the Tribunal**

The Judicial Service Commission shall appoint the Secretary to the Tribunal.

### **37. Staff of the Tribunal**

(1) The Judicial Service Commission may appoint such staff as are necessary for the performance of the functions of the Tribunal under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission from time to time, determine.

### **38. Protection from personal liability**

No matter or thing done by any of the member of the Tribunal shall, if the act

or omission was done in good faith for the purpose of exercising the powers of the Tribunal under this Act, render the person liable for any action, claim or demand.

### 39. Rules of the Tribunal

(1) The Chief Justice shall lay down the rules and procedures of the Tribunal in accordance with fundamental dispute resolution principles and international best practices.

(2) Without prejudice to the generality of subsection (1), the Rules may make provisions relating to—

- (a) the way in which applications for review are to be made;
- (b) the procedure to be adopted by the Tribunal;
- (c) the nature of records to be kept;
- (d) the procedure of giving notice to the parties;
- (e) the fees to be charged; and
- (f) costs.

(3) The provisions of the Civil Procedure Act (Cap. 21) shall apply to the claims submitted before the Tribunal, where this Act, its Regulations and the Rules and procedure are silent on the concerned matter.

## PART VII — REGULATIONS

### 40. Regulations

(1) The Cabinet Secretary may, on the recommendation of the Authority, make Regulations generally for the better carrying out the purposes and objectives of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) designate qualified activities to be conducted by NIFC firms;
- (b) determine any benefits, exemptions and incentives available to NIFC firms;
- (c) determine the general conditions of entry of firms to the Centre;
- (d) provide for the certification process of NIFC firms;
- (e) provide for the payment of compensation and penalties or fines in the event of a breach of the provisions of this Act or its regulations;
- (f) prescribe information required of NIFC firms; and
- (g) address any other matter required in order to achieve the objectives of this Act.

## PART VIII — MISCELLANEOUS

### 41. Definition under this Part

In this Part, "former Authority" means the Nairobi International Financial Centre Authority established under the Nairobi International Financial Centre Authority Order, 2014 (L.N. No. 44 of 2014).

### 42. Revocation

(1) The Nairobi International Financial Centre Authority Order, 2014 (L.N. 44/2014) is revoked.

(2) Despite the revocation under subsection (1)—



- 
- (a) the funds, assets and other property, both movable and immovable, which immediately before the commencement of this Act were vested in the former Authority shall, upon commencement of this Act, be vested in the Authority;
  - (b) the annual estimates of the former Authority for the financial year shall, upon commencement of this Act, be deemed to be annual estimates of the Authority for the remainder of the financial year;
  - (c) all rights, powers and liabilities whether arising under any written law or otherwise which immediately before the commencement of this Act were vested in, imposed on or enforced against the former Authority shall, upon commencement of this Act, be deemed to be vested in, imposed or enforceable against the Authority; and
  - (d) any person who was a member of staff of the former Authority shall, upon commencement of this Act, be deemed to be a member of staff of the Authority for the remaining period of his or her service.

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## SCHEDULE

[Sections. 10(1) & (2).]

### CONDUCT OF BUSINESS OF THE BOARD

#### 1. Vacation of office

- (1) The Chairperson or a member, other than an *ex-officio* member may-
  - (a) at any time resign by a notice in writing in case of the chairperson, to the President and in case of a member, to the Cabinet Secretary;
  - (b) on the recommendation of the Board, be removed from office in case of the Chairperson, by the President, or by the Cabinet Secretary in case of a member, if the chairperson or member—
    - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
    - (ii) is convicted of a criminal offence that amounts to felony under the laws of Kenya;
    - (iii) is incapacitated by prolonged illness for a period exceeding six months; or
    - (iv) is otherwise unable or unfit to discharge his or her functions.

#### 2. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Despite subparagraph (1), the Chairperson may convene a special meeting of the Board at any time for purposes of transacting the business of the Board upon requisition in writing by at least three members of the Board.

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

(4) The quorum for the conduct of the business of the Board shall be five members.

(5) The chairperson shall preside at every meeting of the Board and in the absence of the chairperson, the members present shall elect one of their number to preside and the member elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting, and in case of a tie, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), proceedings of the Board shall not be invalidated by reason of a vacancy among the members thereof.

### **3. Disclosure of interest**

(1) A member of the Board who has an interest in any contract, or any other matter, present at a meeting shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or matter, or be counted in the quorum of the meeting during the consideration of that matter.

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

(3) A member who does not disclose his or her interest in a contract or any other or who benefits from non-disclosure under subparagraph (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

### **4. Instruments and decisions of the Board**

Any contract, instrument or decision made by the Board shall be made under the hand of the Chairperson or any person authorized to act as such.

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