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THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

ADMINISTRATIVE PROCEDURES FOR THE SALARIES AND REMUNERATION COMMISSION FOR ADMINISTRATION OF PART IV OF THE PUBLIC OFFICER ETHICS ACT, 2003

IN EXERCISE of the powers conferred by section 33 (1) of the Public Officer Ethics Act, 2003, the Salaries and Remuneration Commission establishes the following administrative Procedures:

PART I—PRELIMINARY

Citation

1. These Procedures may be cited as the Salaries and Remuneration Commission Procedures for Administration of Part IV of the Act.

Interpretation

2. In these Procedures, unless the context otherwise requires—

“Act” means the Public Officer Ethics Act, 2003;

“Committee” means the Committee established to oversee the management, verification and access to declarations pursuant to clause 10 of the Regulations

“Declarant” means a person who has made a declaration under the Act;

“Declaration form” means the form set out in the Schedule to the Act in accordance with section 26 (2) of the Act;

“Declaration year” means the year when the two-year declaration under the Act falls due;

“Final declaration” means a declaration made in accordance with section 27 (5) of the Act;

“Initial declaration” means a declaration made in accordance with section 27 (3) of the Act;

“Public Officer” has the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010 and includes a State Officer;

“Regulations” means the Public Officer Ethics Act (Management, Verification and Access to Financial Declarations) Regulations, 2011, Legal Notice No. 179.

“Chairperson/ Secretary” means the Chairperson/Chief Executive Officer/ to the Commission.

“Two-Year declaration” means a declaration made in accordance with section 26(1) of the Act.

Scope of Application

3. These Procedures shall apply to the administration of Part IV of the Act with respect to public officers for which the Salaries and Remuneration Commission is the Responsible Commission.

Commencement

4. These procedures shall come into force upon publication in the *Kenya Gazette*.

PART II—PROCEDURE IN RELATION TO DECLARATIONS

Administration of the Procedures

5. The Chairperson/Secretary shall administer these Procedures on behalf of the Salaries and Remuneration Commission.

Establishment of Committee

6. (1) The Chairperson/Secretary shall within thirty (30) days of commencement of these procedures establish a Committee to oversee the management, verification and access to declarations as contemplated under clause 10 of the Regulations.

(2) The Committee under sub-paragraph 1 shall consist of public officers drawn from various directorates/departments/units.

(3) The membership and size shall be determined by the Chairperson/Secretary.

(4) The Committee shall have power to co-opt additional members to support its operations.

(5) The Commission shall determine the term of the Committee.

(6) In the discharge of its functions, the Committee shall be responsible to the Chairperson/Secretary pursuant to clause 10 of the Regulations;

(7) In administering these procedures, the Committee established under this part may designate sub-committees from its membership to undertake specific functions.

(8) Nothing under this part shall be construed as prohibiting the Commission from designating an officer who is not a member of the Committee to undertake specified tasks in relation to any function under these Procedures provided that in the performance such tasks, the officer so designated shall be responsible to the Committee.

Procedure in Submitting Declarations

7. (1) A Public Officer shall submit a declaration in the Form set out in the Schedule to the Act.

(2) The Commission may use such measures as may be appropriate to facilitate a Public Officer to acquire the form referred to in sub-paragraph (1).

(3) The Commission may publish the declaration form in a format that may permit the declaration form—

- (a) to be rendered in digital format; or
- (b) to be downloaded from a website and printed out in paper format.

(4) Where a Public Officer is required to make an initial, two-year or final declaration, the Chairperson/Secretary may issue a notification to the Public Officer not less than thirty (30) days before the due date for the declaration.

(5) Failure to provide a declaration form or to issue a notification under this paragraph shall not be construed as a waiver of the responsibility of the public officer to submit a declaration under the Act.

Completion and Submission of Declarations

8. A Public Officer shall complete and submit the declaration form to the Chairperson/Secretary in the form prescribed in the Schedule to the Act;

Register of Declarations

9. (1) The Commission shall maintain a register containing details of each Public Officer who is required to make a declaration under the Act. The register shall include—

- (a) name, personal number, designation, directorate, department or unit;
- (b) date the Public Officer submitted the declaration form;
- (c) type of declaration (initial, two-year or final);
- (d) total number of Public Officers who have submitted declarations as at the due date;
- (e) total number of Public Officers required to submit declarations;
- (f) name and signature of officer receiving the declarations; and
- (g) any remarks relating to the declarations.

(1) The Chairperson/Secretary shall acknowledge each declaration/submissions.

(2) A register under this part may be maintained in different documents and formats.

PART III—PROCEDURE IN RELATION TO VERIFICATION AND CLARIFICATION

Verifications of Declarations

10. 1. The Commission shall analyze, evaluate, inspect and verify each declaration to ascertain if any of the following conditions exist—

- (a) on the face of the declaration, or in light of any other information the Commission may have, there is reason to suspect the declaration is false or incomplete;
- (b) the assets of the declarant appear disproportionate to their known income;
- (c) the income, assets or liabilities of the declarant raise concerns of impropriety or conflict of interest.

Requests for Clarification

11. (1) If upon verification under paragraph 10, the Commission is of the opinion that any of the stated conditions exist, the declarant shall be given an opportunity to make clarification in accordance with section 28 (1) of the Act.

(2) A request for clarification shall be made in the form prescribed in the Regulations.

(3) The Commission shall, in the register of access to declarations, document the particulars of clarification sought, the mode of

communication, the time given to respond, the date and particulars of response, if any.

(4) Where no explanation is given, or after considering any explanation the declarant may give, the Commission is of the opinion that the conditions in subparagraph (1) (b) still exist, the Commission may, in addition to any other action including criminal and civil proceedings, take disciplinary or other appropriate action against the Public Officer in accordance with the relevant laws, regulations and code of conduct.

PART IV—PROCEDURE FOR THE ACCESS, ACQUISITION AND DISCLOSURE OR PUBLICATION OF INFORMATION IN A DECLARATION

Access and Publication of Information in a Declaration

12. (1) A person who wishes to access or to publish information in relation to a declaration or clarification under the Act shall—

- (a) apply to the Commission in the form set out in Appendix;
- (b) demonstrate to the Commission that the applicant has a legitimate interest in the information; and
- (c) demonstrate to the Commission that the access to or publication of that information shall be for a good cause and in furtherance of the objectives of the Act.

(2) Where the information is intended to be disclosed or published, the applicant shall expressly state so in the application.

(3) Where a person has made an application to the Commission in accordance with this paragraph—

- (a) the Commission shall issue the applicant with an acknowledgement in the form set out in Appendix II;
- (b) the Commission shall inform the declarant of the application in writing;
- (c) the Commission shall give the declarant an opportunity to make a representation in writing in relation to the application within fourteen (14) days; and
- (d) the Commission shall take into consideration the representation by the declarant when determining the application.

(4) The Commission shall determine an application made in accordance with this paragraph and communicate its decision in writing to the applicant within thirty (30) days of receipt of the application.

(5) The Commission or any other person shall not disclose, access, acquire or publish the information in the declaration form except as may be provided in the Act, the Regulations, these Procedures, or any other written law.

(6) The Commission shall not release or part with the original declaration made by any declarant in satisfying the requirements of this paragraph, unless required under any written law.

PROVIDED that where an original declaration is released the Commission shall always retain a certified copy of the declaration.

(7) The Commission shall maintain a register of applications for access to declarations and decisions made under this part setting out—

- (a) the name of each applicant;
- (b) the date each application was received;
- (c) the name and personal number of the declarant subject of the application;
- (d) the department or other unit to which the declarant belongs;
- (e) a brief description of the information applied for;
- (f) whether the declarant accepts or opposes access to the information applied for;
- (g) a brief description of the decision made in relation to the application including reasons for denial where applicable; and
- (h) the date when decision was communicated to the applicant.

Access by a Declarant

13. (1) The provisions of paragraph 12 shall not apply where the declarant makes an application to access their own declaration.

(2) An application by a declarant to access their declaration shall be made to the Chairperson/Secretary.

(3) Upon receipt of an application under this paragraph, the Chairperson/Secretary shall avail a certified copy to the declarant within thirty (30) days.

(4) The Commission shall not give the declarant access to their declaration unless—

- (i) the declarant proves their identity; or
- (ii) in the case of a representative of the declarant, that representative provides proof of their authority to act as such.

Decisions of the Commission on Access

14. The Commission shall make a decision on an application for access in accordance with the Act, regulations and procedures, which shall be communicated to the applicant.

Review

15. (1) The applicant may request for a review of the decision in paragraph 14.

(2) Upon receipt of the request to review its decision, the Commission shall consider the request and make a determination within thirty (30) days.

Appeal

16. Any person dissatisfied with the decision of the Commission may appeal in accordance with the procedure set out in the Regulations.

PART V—PROCEDURE IN RELATION TO STORAGE, RETENTION AND RETRIEVAL OF DECLARATIONS*Mechanisms for Storage, Retention and Retrieval*

17. (1) The Commission shall ensure that appropriate mechanisms are put in place for the safe and secure storage, retention and easy retrieval of the declarations and clarifications.

(2) The mechanisms established under sub-paragraph (1) may include manual, electronic, microfilm or any other form as the Commission may consider appropriate.

Cessation of Retention of Information

18. (1) Where the period for retaining information obtained in accordance with Part IV of the Act has lapsed, the Commission shall determine the action to be taken in relation to that information.

(2) The Chairperson/Secretary may make a written proposal to the Commission in relation to the action to be taken in accordance with sub-paragraph (1).

Returns to Ethics and Anti-Corruption Commission

19. (1) Pursuant to sections 4 (2) and 6 (3) of the Leadership and Integrity Act, 2012, the Commission shall submit to the Ethics and Anti-Corruption Commission, by the 31st July following the submission of two-year declarations, the following information—

- (a) the number of public officers in the payroll as at 31st October of the declaration year;
- (b) the total number of public officers who have submitted declarations within the prescribed time;
- (c) the total number of public officers who have failed to submit declarations within the prescribed time;
- (d) any action taken by the Commission in relation to any public officer who has failed to comply with the Act, the regulations and/or these procedures;
- (e) number of declarations verified;
- (f) findings in respect to the verification of declarations
- (g) any action taken pursuant to the verification of the declaration; and
- (h) any relevant remarks relating to the returns.

(2) In the case of initial and final declarations, the Commission shall, by 31st of July each year, submit to the EACC the information required in subparagraph (1) in respect to the financial year ending on 30th June of the preceding year.

(3) The report under this part shall be in the form prescribed in Appendix III.

PART VI—GENERAL PROVISIONS*Matters not covered by these Procedures*

20. The Commission may subject to the Act, Regulations and these procedures, issue guidelines in writing in relation to any matter that has not been provided for in these procedures.

Representations to the Commission

21. The Commission may consider representations from any person on any matter to which these Procedures apply.

Review and Amendment of these Procedures

22. The Commission may from time to time review and/or amend these Procedures as may be necessary.

Transition

23. (Where applicable, provide for revocation of any previous procedures).

LYN C. MENGICH,
Chairperson, Salaries and Remuneration Commission.