

SPECIAL ISSUE

Kenya Gazette Supplement No. 21 (Bills No. 4)



**NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY**

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2014

NAIROBI, 3rd March, 2014

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SCHEDULES

FIRST SCHEDULE—ACTS TO BE ADMINISTERED BY THE SERVICE

SECOND SCHEDULE— THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

**THE BUSINESS REGISTRATION SERVICE
BILL, 2014**

A Bill for

AN ACT of Parliament to establish the Business Registration Service to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms, the laws relating to individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, chattels transfers, adoption, coat of arms, books and newspapers, the national flag, emblems and names and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Business Registration Service Act, 2013 and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Board” means the Board of Directors established by section 5;

“Cabinet Secretary” means the Cabinet Secretary for time being responsible for matters relating to business registration;

“chairperson” means the chairperson of the Board appointed under section 5.

“member” means a member of the Board appointed under section 5;

“Service” means the Business Registration Service established by section 3;

“Registrar- General” means the Registrar-General appointed under section 17.

**PART II – ESTABLISHMENT, OBJECTS AND
FUNCTIONS OF THE SERVICE**

3. (1) There is established the Business Registration Service.

Establishment of the Service.

(2) The Service 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) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money; and
- (d) doing or performing all such other things or acts as may be necessary for the proper performance of its functions under this Act, which may lawfully be done by a body corporate

(3) The headquarters of the Service shall be in the capital city but the Service may establish branches in any other place in Kenya to ensure reasonable access of its services.

Functions of the Service.

4. (1) The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws and other matters relating to registration of companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, trade unions, chattels transfers, adoptions, coat of arms, books and newspapers, the National flag, emblems and names.

(2) Notwithstanding the generality of subsection (1), the Service shall—

- (a) administer the Acts and carry out all registrations required under the Acts specified in the First Schedule;
- (b) maintain registers, data and records on registrations carried out by the Service;
- (c) implement relevant policies and guidelines and provide the Cabinet Secretary with the necessary information to guide the formulation of policy and amendment of existing policy and guidelines;
- (d) carry on research and disseminate research findings in the fields covered by the relevant laws through seminars, workshops, publications or other means and to recommend to the Government any improvements in the relevant laws;

- (e) collaborate with other state agencies for the effective discharge of its functions;
- (f) charge fees for any service performed by the Service; and
- (g) perform such other activity as may be necessary for the performance of its functions under of this Act.

PART III—ADMINISTRATION

5. (1) The Service shall be governed by a board of directors.

The Board of the Service.

- (2) The Board shall consist of—
 - (a) a chairperson;
 - (b) the Attorney-General or his representative;
 - (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade;
 - (d) the Principal Secretary in the State Department for the time being responsible for matters relating to devolved government;
 - (e) the Principal Secretary in the National Treasury;
 - (f) four other members; and
 - (g) the Registrar-General who shall be an ex-officio member

(2) The chairperson and the members of the Board referred to in subsection (1) (f) shall be appointed by the Cabinet Secretary from among persons who have knowledge and proven experience in matters relating to this Act.

6. (1) The chairperson and a member appointed under section 5(1)(g) shall hold office—

Tenure.

- (a) for a term of five years but shall be eligible for re-appointment for one further term; and
- (b) on such terms and conditions as may be determined by the Cabinet Secretary.

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

- (a) dies;
- (b) is absent from three consecutive meetings of the Board without reasonable cause;
- (c) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (d) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (e) is negligent or incompetent in the performance of his or her functions;
- (f) is adjudged or otherwise declared bankrupt under any law in force in Kenya;
- (g) violates Chapter six of the Constitution; or
- (h) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

Functions of the Board.

7. The Board shall—

- (a) formulate and review the policies of the Service;
- (b) ensure that the Service performs its functions;
- (c) monitor and evaluate the performance of the Service;
- (d) appoint, train, discipline and remove members of staff of the Service;
- (e) establish departments within the Service and allocate responsibilities to such departments; and
- (f) perform such other functions as prescribed by this Act or any other written law.

Powers of the Board.

8. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Service in such manner as best promotes the purposes for which the Service is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Board;

- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Service is established;
- (e) open a banking account or banking accounts for the funds of the Service; and
- (f) invest any of its funds not immediately required for its purposes in the manner provided in section 27.

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

Meetings of the Board.

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

(3) The Board may co-opt any person to attend any of its meetings but that person shall not vote at such meeting.

10. The chairperson, members of the Board and staff of the Service shall be paid such remuneration or allowances as the Board may, with the approval of the Cabinet Secretary, determine.

Remuneration of members.

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

Delegation by the Board

12. The validity of any proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member or by the fact that a person who was not entitled to do so took part in the proceedings of the board.

Vacancy not to affect proceedings.

13. (1) The Board may establish such committees as it shall consider necessary for the efficient performance of its functions under this Act.

Committees.

(2) The Board may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Board.

Engagement of experts and consultants.

14. (1) The Board may, on the advice of the Registrar-General engage the service of experts and consultants in respect of any of the functions of the Service.

(2) An expert or consultant engaged under this section may be paid such fees and allowances as the Board may determine.

Protection from Personal liability.

15. No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

Liability of the Board for Damages.

16. The provisions of section 15 shall not relieve the Board of the liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

PART IV—MANAGEMENT AND STAFF OF THE SERVICE.

Registrar-General.

17. There shall be a Registrar-General who shall be appointed by the Cabinet Secretary on the recommendation of the Board and on the terms and conditions specified in the instrument of appointment.

Appointment of Registrar-General.

18. (1) A person is qualified for appointment as the Registrar-General if the person—

- (a) is qualified as an advocate of the High Court of Kenya;
- (b) has at least ten years proven experience in matters relating to business registration; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) The Board shall, through an open transparent and competitive process, appoint a suitably qualified person to be the Registrar-General.

(3) The Registrar-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(4) The Registrar-General shall, in the performance of the functions and duties of office, be responsible to the Board.

(5) The Registrar-General shall be—

- (a) the chief executive officer of the Service;
- (b) the accounting officer of the Service;
- (c) responsible for the—
 - (i) implementation of the decisions of the Board;
 - (ii) formulation and development of an efficient administration;
 - (iii) organisation, control and management of the members of staff of the Service;
 - (iv) day-to-day administration and management of the affairs of the service; and
 - (v) performance of such other duties as may be assigned by the Board.

19.(1) The Registrar-General may be removed from office by the Board for—

Removal of Registrar-General.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehavior;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution; or
- (e) any other grounds specified in the terms and conditions of service of the Registrar-General.

(2) The Board shall, before removing the Registrar-General under subsection (1)—

- (a) inform the Registrar-General in writing of the reasons for the intended removal;
- (b) give the Registrar-General an opportunity to be heard in accordance with the principle of fair administrative action prescribed under Article 47 of the Constitution.

20. (1) The Service may appoint such Registrars and other staff as may be necessary for the proper discharge of

Appointment of staff.

its functions under this Act, upon such terms and conditions of service as the Board may determine.

(2) The Public Service Commission may, upon the request by the Board, second to the Service such number of public officers as may be necessary for the purposes of the Service.

(3) A public officer who is seconded to the Service shall, during the period of secondment, be deemed to be an officer of the Service and shall be subject only to the direction and control of the Board.

Delegation powers
of Registrar-
General.

21. The Registrar-General may, with the approval of the Board, delegate in writing any of his or her powers or functions under this Act or any other written law to any other officer or member of staff on the terms specified in the instrument of delegation.

The common seal of
the Board.

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

(2) The affixing of the common seal shall be authenticated by the chairperson or any other person authorized in that behalf by a resolution of the Board.

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

PART V— FINANCIAL PROVISIONS

Funds of the
Service.

23. The funds of the Service shall consist of—

- (a) monies allocated by Parliament for the purposes of the Service;
- (b) such monies or assets as may accrue to the Service in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) such grants, donations or endowment received by the Board on behalf of the Service; and
- (d) such funds as may vest in or accrue to the Service from any other source authorised by law.

24. The financial year of the Service shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Financial year.

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

Annual estimates.

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

- (a) payment of remuneration in respect of the members and staff of the Service;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable to the staff of the Service;
- (c) maintenance of buildings and grounds of the Service;
- (d) maintenance, repair and replacement of equipment and other property of the Service;
- (e) funding of training, research and development activities of the Service;
- (f) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board may think fit; and
- (g) any other expenditure necessary for purposes of this Act.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for purposes of the Service except in accordance with the annual estimates approved under subsection (3).

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

Accounts and audit.

Act 12 of 2003 (2) The annual accounts of the Service shall be prepared, audited and reported upon in accordance with the Public Audit Act.

Investment of funds. 27.(1) The Board may invest any of its funds in securities in which, for the time being, trustees may by law invest trust funds, or in any other securities which the National Treasury may, from time to time, approve for that purpose.

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

PART VI- MISCELLANEOUS PROVISIONS

Annual report. 28. (1) The Board shall cause an annual report to be prepared for each financial year.

(2) The Board shall submit the annual report to the Cabinet Secretary for onward transmission to the National Assembly three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Service;
- (b) a description of the activities of the Service;
- (c) such other statistical information as the Board may consider appropriate relating to the functions of the Service;
- (d) the impact of the exercise of the mandate or functions of the Service;
- (e) the progress and the welfare of the members of the Service, including matters relating to housing, insurance, safety equipment and the conditions of service;
- (f) the gender, regional and ethnic diversity in the Service; and
- (g) any other information relating to the functions of the Service that the Board considers necessary.

(4) The Board shall cause the annual report to be published and the report shall be publicized in such manner as the Board may determine.

29. (1) A person shall not—

Offences.

- (a) obstruct, hinder, or threaten a member of staff of the Service acting under this Act;
- (b) submit false or misleading information to the Service; or
- (c) knowingly misrepresent anything to mislead, a person acting under the Authority of the Service under this Act.

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

30. The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.

Regulations.

31.(1) Until the Board is constituted and has competitively recruited staff in accordance with this Act, the staff of the Department of the Registrar-General employed by the Government immediately before the commencement of this Act, shall be deemed to be staff of the Service.

Transition of staff.

(2) A member of staff referred to in subsection (1) who is not recruited by the Board shall be redeployed in the public service.

32. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Department of the Registrar-General for the purposes of giving effect to the relevant laws, shall, on the date of commencement of this Act, vest in the Service subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Transfer of assets and liabilities.

33. All legal proceedings and claims pending in respect of actions and activities to which the relevant laws apply shall be continued or enforced by or against the Service in the same manner as they would have been continued or enforced by or against the Government had this Act not been enacted.

Pending proceedings and claims.

FIRST SCHEDULE (S.4)**ACTS TO BE ADMINISTERED BY THE SERVICE**

1. The Companies Act (Cap 486).
2. The Partnership Act No 16 of 2012.
3. The Limited Liability Partnership Act, No.42 of 2011.
4. The Societies Act (Cap.108).
5. College of Arms Act (Cap 98).
6. Registration of Business Names Act (Cap 499).
7. Hire Purchase Act (Cap. 507).
8. Books and Newspapers Act (Cap.111).
9. Bankruptcy Act (Cap.53).
10. Chattels Transfer Act (Cap.28).
11. National Flag, Emblems and Names Act (Cap.99).

SECOND SCHEDULE (S. 9)**THE CONDUCT OF BUSINESS AND AFFAIRS OF
THE BOARD**

Meetings.

1. (1) The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.

(2). A meeting of the Board shall be held on such date and at such time and place as the Board may determine.

(3). The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.

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

(5) The quorum for the conduct of business at a meeting of the Board shall be any five members excluding *ex-officio* members of the Board.

(6) The chairperson shall preside at every meeting of the Board at which he or she is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

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

(8) Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Unless otherwise provided by or under any law, all instruments made by and decisions of the Board shall be signified under the hand of the chairperson.

(10) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make regulations in respect thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that person shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of
interest.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting

at which it is made.

Contracts.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by the Office of the Attorney-General. The principle object of this Bill is to establish the Business Registration Service to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms, the laws relating to individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, chattels transfers, adoption, coat of arms, books and newspapers, the national flag, emblems and names.

Part I of the Bill deals with preliminary matters.

Part II establishes the Business Registration Service and sets out its functions which include administering the Acts and carrying out all registrations required under the Acts specified in the First Schedule, maintaining registers, data and records on registrations carried out by the Service, implementing relevant policies and guidelines and providing the Cabinet Secretary with the necessary information to guide the formulation of policy and names of existing policy and guidelines, and carrying on research and disseminating research findings in the fields covered by the relevant laws and recommending, to the Government, any improvements in the relevant laws.

Part III provides for the administration of the Service and sets out the composition of the Board of the Service, its functions and powers and provides for the circumstances under which a vacancy may arise on the Board. The Part further provides for delegation by the Board and empowers the Board to establish committees for the better performance of its functions.

Part IV provides for the management and staff of the Service. Clause 18 provides for the appointment of the Registrar-General as the Chief Executive Office of the Service in a competitive manner. Clause 19 provides for the circumstances under which the Registrar-General may be removed from office.

Part V of the Bill sets out the financial provisions in relation to the Service. Clause 23 provides for the monies that shall constitute the funds of the Service. Clause 25 provides for the preparation of annual estimates of the Service.

Part VI contains miscellaneous provisions. Clause 28 provides for the report of the Service and the matters that should be contained therein. Clause 29 creates offences by prohibiting a person from obstructing or hindering a member of the service, submitting false information to a

member of staff of the Service or misleading a member of staff of the service. Clause 30 empowers the Cabinet Secretary to make Regulations.

The First Schedule specifies the laws that are to be administered by the Service. The Second Schedule provides for the manner in which the meetings and other affairs of the Board will be conducted.

The Bill does not concern county governments.

The enactment of the Bill will occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 25th February, 2014

ADEN DUALE,
Leader of the Majority Party.