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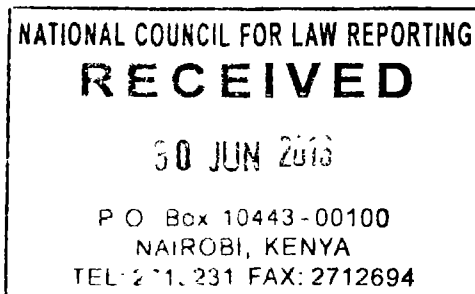
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**FIRST SCHEDULE — PROVISIONS AS TO THE
CONDUCT OF BUSINESS
AND AFFAIRS OF THE
COUNCIL**

**SECOND SCHEDULE—COMMITTEES OF THE
COUNCIL**

A Bill for

AN ACT of Parliament to provide for the training, registration, licensing, practice and standards of ICT practitioners and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Information Communication Technology Practitioners Act, 2016.

Short title.

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

Interpretation.

“Council” means the Council of the Institute established under section 3;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to information communication technology;

“Information Communication Technology (ICT)” means technologies employed in collecting, storing, processing, using or sending out information and include those involving the use of computers, mobile apparatus or any telecommunication system;

“ICT practitioner (ICTP)” means a person registered under this Act as an ICT practitioner who is also licensed under section 20 to practice as such;

“ICT practice” means the practice of ICT as the case may be, for a fee or gain either in kind or cash;

“Institute” means the ICT Practitioners Institute established under section 3;

“practicum” means an ongoing, supervised and organized practical experience or internship prescribed as part of the qualifications for the award of any degree or diploma and obtained in an integrated training program recognized by the Council;

“Register” means the register of ICT practitioners maintained under section 17.

(2) The expressions “legally qualified ICT practitioner” and “duly qualified ICT practitioner” or any words importing a person recognized by law as an ICT

practitioner or a member of the profession of ICT, when used in a written law with reference to that person, shall be construed to mean a person registered as an ICT practitioner under this Act or, where the context so admits, a person who is registered by the Institute under section 16.

PART II—ESTABLISHMENT OF THE ICT PRACTITIONERS INSTITUTE

3. (1) There is established an Institute to be known as the ICT Practitioners Institute.

Establishment of the Institute.

(2) The Institute is 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) acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under the Act.

(3) (a) The Institute shall be governed by a Council to be known as the Council of the Institute.

- (b) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Council or with the authority of the Council shall be deemed to have been done by the Institute.

4. (1) The Council shall consist of—

Composition of the Council.

- (a) the principal secretary in the Ministry for the time being responsible for matters relating to information communications technology;
- (b) the principal secretary in the Ministry for the time being responsible for matters relating to the national treasury;
- (c) one person appointed by the Cabinet Secretary to represent training institutions in Kenya which have power to grant a qualification which is recognized under this Act;

- (d) one person who shall be of the female gender appointed by the Cabinet Secretary to represent minorities and marginalized groups;
- (e) five persons of good professional standing nominated by the Information Communication Technology Association of Kenya; and
- (f) the chief executive officer, who shall be appointed by the Council through an open, transparent and competitive recruitment process, and who shall be the secretary to the Council.

(2) All appointments under this section shall be by notice in the *Gazette*.

(3) There shall be a chairman and vice chairperson of the Council who shall be elected in the manner provided in paragraph 3 of the First Schedule.

(4) A person shall not be appointed as a member of the Council under subsection (1) (a) unless such person—

- (a) is a citizen of Kenya;
- (b) has at least five years' experience in ICT related matters;
- (c) meets the requirements of Chapter Six of the Constitution.

(5) In appointing the members of the Council under subsection (1) (c) and (d), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

5. (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the First Schedule.

Conduct of business and affairs of the Council.

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

6. The functions of the Institute shall be to—

Functions of the Institute.

- (a) establish standards of professional competence and practice amongst members of the Institute;
- (b) protect, assist and educate the public in Kenya in all matters touching, ancillary or incidental to the profession of ICT;

- (c) represent, protect and assist members of the profession of ICT in Kenya in respect of conditions of practice and otherwise;
- (d) approve courses for purposes of registration of ICT Practitioners under this Act;
- (e) administer such examinations as may be necessary to determine whether persons are qualified for registration under this Act;
- (f) register and licence ICT practitioners for the purposes of this Act upon payment of the prescribed fees;
- (g) collaborate with training institutions, professional associations and other relevant bodies in matters relating to training and professional development of ICT practitioners;
- (h) determine the fees to be charged by ICT practitioners and firms for professional services rendered from time to time;
- (i) upon request, to act as an arbitrator in any disputes between a licensed ICT Practitioner and a client;
- (j) advise the Cabinet Secretary on appropriate policies and programs governing the profession of ICT in Kenya;
- (k) supervise the professional conduct and practice of ICT practitioners and to take the necessary disciplinary measures in cases of violations of professional conduct and discipline;
- (l) plan, arrange, co-ordinate and oversee continuing professional training and development of ICT practitioners.
- (m) promote the international recognition of the Institute;
- (n) carry out any other functions prescribed for it under any of the other provisions of this Act or under any other written law.

7. The Council 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 Council shall have power to—

Powers of the Council.

- (a) control, supervise and administer the assets of the Institute in such manner as best promotes the purpose for which the Institute is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Institute;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for its funds as may be necessary;
- (e) invest any funds of the Institute not immediately required for its purposes in the manner provided in section 36;
- (f) undertake any activity necessary for the fulfilment of any of its functions.

8. The Council shall pay its members such remuneration, fees or allowances for expenses as it may determine upon the advice of the Salaries and Remuneration Commission.

Remuneration of Council members.

9. (1) There shall be a chief executive officer of the Institute who shall be appointed by the Council through an open, transparent and competitive recruitment process.

Chief Executive Officer.

- (2) The chief executive officer shall—
- (a) be the accounting officer of the Institute and shall, subject to the direction of the Council, be responsible for the day to day management of the affairs and staff of the Institute;
 - (b) be an *ex-officio* member of the Council but shall have no right to vote at any meetings of the Council;
 - (c) perform such duties as are prescribed by or under this Act.

(3) The terms and conditions of service of the chief executive officer shall be determined by the council in the instrument of appointment or otherwise in writing from time to time.

(4) A person shall not be appointed as a chief executive officer unless such person is registered as an ICT practitioner under this Act and—

- (a) has at least five years proven experience in the field of ICT;
- (b) has knowledge and experience in policy formulation, administration and management;
- (c) meets the requirements of Chapter Six of the Constitution.

10. The Council may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the council may determine upon the advice of the Salaries and Remuneration Commission.

Staff of the Institute.

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

Delegation by the Council.

12. (1) The Council may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

Committees of the Council.

(2) The Council shall appoint the chairperson of a committee established under subsection (1) from amongst its members.

(3) The council may where it deems appropriate, co-opt any person from outside the Council with knowledge and expertise in specific areas to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Council.

(5) Without prejudice to the foregoing provisions of this section, the Council shall establish the committees set out in the Second Schedule.

13. (1) No act or omission by any member of the Council or by any officer, employee, agent or servant of the Council shall, if the act or omission was done bona fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

(2) The provisions of subsection (1) shall not relieve the Institute of the liability to pay compensation to any

person for any injury to that person, their property or to any of their interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

14. (1) The common seal of the Institute shall be kept in such custody as the Council may direct and shall not be used except upon the order of the Council.

Common Seal.

(2) The affixing of the common seal of the Institute 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 Council may be authenticated by the signatures of both the chairperson and the chief executive officer.

(3) Notwithstanding the provisions of subsection (2) the Council 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 Institute when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been duly given.

PART III—REGISTRATION OF ICT PRACTITIONERS

15. A person shall be eligible for registration under this Act as an ICT practitioner if the person—

Qualifications for registration.

- (a) is the holder of at least a bachelor's degree in an ICT related field from a recognized university;
- (b) is the holder of at least a bachelor's degree from a recognized university and has relevant ICT experience of at least three years;
- (c) is the holder of a diploma from a recognized university and has passed an examination or fulfilled such requirements as may be prescribed by the Council;
- (d) satisfies the Council that he or she is a person of good moral character and a fit and proper person to be registered under this Act.

16. (1) Every person eligible to be registered as an ICT practitioner may apply in the prescribed form to the Registrar for registration in the register, and every such application shall be accompanied by the prescribed fee.

Registration.

(2) Where a person has complied with the provisions of subsection (1) and has been accepted by the Council as being eligible for registration and has satisfied the Council that he or she has been so accepted, he or she shall be registered.

(3) The Council shall issue to every person registered under this Act, a certificate in the prescribed form.

17. The Council shall maintain a register of ICT practitioners in the prescribed form in which the name of every person registered under this Act shall be entered.

Register of ICT practitioners.

18. (1) The Council shall, from time to time, make any corrections in the register in relation to any entry therein.

Alterations to the Register.

(2) All changes in the entries under subsection (1) shall be made as soon as is practicable after receipt of the notification thereof.

(3) The Council shall remove from the register—

(a) the name of every—

(i) deceased person;

(ii) person convicted of an offence under this Act and all avenues of appeal have been exhausted;

(iii) person whose name the Council has, under section 27, directed that it should be struck off the Register; and

(b) any entry which has been incorrectly or fraudulently made in the register.

(4) The Council may, with the written consent of the person, remove from the register the name of a person who has ceased to practice.

(5) Every person registered under this Act who has obtained a higher qualification than the registered qualification shall, on the payment of the prescribed fee, be entitled to have that additional qualification inserted in the register in addition to the qualification previously registered.

19. (1) The Council shall publish in the Gazette as soon as may be practicable after registration, the name of every ICT practitioner registered under this Act.

Publication of registration.

(2) It shall be the duty of every ICT practitioner to inform the Council immediately of any change in their registered address.

(3) The publication of the list of registered ICT practitioners in the Gazette shall be *prima facie* evidence that the persons named therein are registered under this Act, and the absence of the name of any person from such list shall be *prima facie* evidence that the person is not so registered.

PART IV—LICENSING OF ICT PRACTITIONERS

20. (1) A person shall not practise as an ICT practitioner unless such person has complied with the requirements for continuing education and supervision, and has been issued with a valid practice license by the Council, in accordance with regulations made under this Act.

Licence to practice.

(2) The Council may issue to an ICT practitioner who has applied in the prescribed form, a license to practice on their own behalf or to be employed.

(3) Subject to the provisions of this Act, a person shall not operate an ICT firm unless—

- (a) the firm has a certificate of registration of a business name or certificate of incorporation;
- (b) the firm has at least one partner or principal shareholder who is registered as an ICT practitioner and who has a valid practicing licence; and
- (c) the firm fulfills any other condition as may be stipulated by the Council.

21. (1) A licence granted under this Act shall be valid for one year, for the duration between the 1st January and 31st December in every year, and may, upon expiry, be renewed.

Period of validity of licences.

(2) A person whose licence has not been renewed for one year or more and who wishes to have the licence renewed may apply to the Council upon—

- (a) swearing an affidavit in the prescribed form explaining the reasons for non-renewal;
- (b) payment of the license fee for the current license period;
- (c) presentation of evidence to the Council of fulfilment of all applicable conditions for renewal of a license; and
- (d) payment of annual subscription fee for the current licence period.

(3) The Council may refuse to issue or to renew a licence.

(4) A person aggrieved by a decision of the Council under this section may appeal to the High Court, and in any such appeal the High Court may annul or vary the decision of the Council as it may determine necessary.

22. (1) The issue and the cancellation, revocation or withdrawal of a licence under this Part shall be published in the *Gazette*.

Publication of licences.

(2) The Council shall, once in every year, as soon as convenient after 1st January, but not later than 31st March, publish in the *Gazette* a list containing the names, qualifications and registered addresses of all licensed ICT practitioners.

23. A person shall not be entitled to recover a fee for ICT services, unless such person is licensed under this Act.

No fees for unlicensed persons

PART V—ENFORCEMENT

24. (1) Any person who wilfully procures or attempts to procure registration or licensing under any of the provisions of this Act, by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

False registration or licensing.

(2) If a person convicted of an offence under this section is registered or licensed under this Act, the Council shall remove such person's name from the register and cancel the licence.

25. A person who is licensed as an ICT practitioner commits an act of professional misconduct if such person—

Professional misconduct.

- (a) deliberately fails to follow the laid down standards of conduct and practice of the profession of ICT as may be laid down by the Council;
- (b) commits gross negligence in the conduct of professional duties,
- (c) allows another person to practise in their name, where such person—
 - (i) is not a holder of a practising certificate issued under this Act; and
 - (ii) is not in partnership with the ICT practitioner;
- (d) takes advantage of clients by abusing a position of trust, expertise, or authority;
- (e) is insensitive to clients through a lack of regard or concern for clients' needs, feelings, rights, or welfare of others;
- (f) shows incompetence or inability to render services, for reasons ranging from inadequate training or inexperience, to personal unfitness, such as a character defect or an emotional disturbance;
- (g) evidences irresponsibility including lack of reliable or dependable execution of professional duties, attempts to blame others for one's mistakes, shoddy or superficial professional work, or excessive delays in delivering necessary feedback, assessments, reports, or services; or
- (h) is guilty of abandonment through failure to follow through with their duties or responsibilities, thereby causing clients to become vulnerable or incur unnecessary expenditure.

26. (1) Any person may, being dissatisfied with any services offered by an ICT practitioner or alleging breach of the standards of conduct as may be specified by the Council from time to time, make a written complaint to the Council in the prescribed manner.

Disciplinary proceedings by the Council.

(2) Where the Council is satisfied in respect of any person registered or licensed under this Act, that such person—

- (a) has been convicted of an offence under this Act or under any other law punishable by imprisonment, the commission of which in the opinion of the Council has brought the profession to disrepute;
- (b) has committed an act of negligence or malpractice in respect of his or her profession or
- (c) has committed an act of impropriety or misconduct in respect of his or her profession, the Council may, subject to subsection (10)—
 - (i) remove such person's name from the register;
 - (ii) suspend such person's licence or registration for a period not exceeding twelve months; or
 - (iii) cancel such person's licence.

(4) For the purpose of proceedings at an inquiry held under this section, the Council may administer oaths and may, subject to the provisions of regulations made under this Act, enforce the attendance of persons as witnesses and the production of books and documents as evidence.

(5) Any person whose name has been removed from a register or whose license has been cancelled or suspended shall forthwith surrender to the Council his or her certificate of registration or license, and any person who fails to do so commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or both.

(6) Subject to the provisions of this section and to rules as to procedure made under this Act, the Council may regulate its own procedure in disciplinary proceedings.

(7) The power to direct the removal of the name of a person from the register or to cancel the licence of a person shall include a power exercisable in the same manner to direct that during such period as may be specified in the order, the registration of a person's name in the register or the licence granted to him or her shall not have effect.

(8) The provisions of this section, in so far as they relate to the cancellation or suspension of licenses, shall be in addition to and not in derogation of the provisions of section 18.

(9) A person who fails, when summoned by the Council, to attend as a witness or to produce any books or documents which he is required to produce commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for six months, or both.

(10) Notwithstanding any other provisions of this Act, the Council shall not remove the name of a person from the register, or cancel any licence granted to a person, unless such a decision is supported by a majority of all the Council members.

27. (1) Subject to the provisions of this Act, the removal of a person's name from the register shall be notified by the Council to that person by registered mail sent to the address appearing in the register against that person's name immediately before such removal.

Effect of removal, suspension or cancellation.

(2) Where the name of a person has been removed from the register, the name of that person shall not, subject to the provisions of this Act, be entered again in the register except by order of the Council.

(3) Where an order has been made for the removal of a person's name from the register, or for suspending a person's registration under this Act, or for cancelling or suspending a licence granted to a person under this Act, the Council may either on its own motion or on the application of the person concerned, and in either case after holding such inquiry as the Council may deem fit, cause the name of that person to be restored to the register or terminate the suspension of the registration, or, as the case may be, grant a new licence or terminate the suspension of the existing licence, in any such case either without fee or on the payment of such fee, not exceeding the appropriate registration or licence fee, as the Council may determine.

(4) Subsection (1) shall not apply when a person's name has been removed from the register at that person's request or with that person's consent in circumstances under which it could not otherwise have been removed without consent.

(5) Notwithstanding the provisions of subsection (3) above, a person whose name was removed from the register at that person's own request, shall upon application and on

payment of the prescribed fee, have the name restored on the register.

28. Any person aggrieved by a decision of the Council under this Act may appeal within thirty days to the High Court and in any such appeal the High Court may confirm, annul or vary the decision of the Council as it deems fit.

Appeals.

29. (1) Any person who, not being eligible to be licensed or registered under this Act, wilfully and falsely takes or uses any name, title or addition implying a qualification to practice as an ICT practitioner, or who, not being registered or licensed under this Act, practises or professes to practice or publishes that person's name as practising as an ICT practitioner, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

Offences by unregistered or unlicensed persons.

(2) Any person who, not being eligible to be licensed or registered under this Act, uses the title "ICT practitioner" as appropriate to a person so registered or licensed, which entitles such person to use that title, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or both.

30. Any person, being in charge of a training institution which is not approved by the Council as an institution for the training of persons seeking registration under this Act, who—

Obstruction of officers of the Council.

- (a) admits to the institution under their charge any person for the purpose of training in the profession of ICT;
- (b) purports to be conducting a course of training or examining persons seeking registration under this Act or regulations made thereunder;
- (c) issues any document, statement, certificate or seal implying that the holder thereof has undergone a course of instruction or has passed an examination prescribed by the Council; and
- (d) issues any document, statement, certificate or seal implying that the institution under his or her charge is approved by the Council as an institution

for training of persons seeking registration under this Act,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years, or both.

31. Any person who obstructs or hinders, or knowingly makes a false or misleading statement to any member, officer, servant or agent of the Council who is carrying out duties under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

Punishment for offence of obstruction.

PART VI—FINANCIAL PROVISIONS

32. The funds of the Institute shall comprise—

Funds of the Institute.

- (a) such fees, monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (b) all monies from any other source provided for or donated or lent to the Institute.

33. The financial year of the Institute shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

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

Annual estimates.

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

- (a) the payment of such facilities and services as the Institute may require for the discharge of its functions under this Act;
- (b) the payment of the allowances and other charges in respect of members of the Council;
- (c) the payment of salaries, pensions, gratuities and other charges in respect of staff of the Institute;