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**THE INSTITUTE OF DIRECTORS OF KENYA
BILL, 2019**

A Bill for

AN ACT of Parliament to establish the Institute of Directors of Kenya; to provide for the registration and regulation of the standards and practice of the profession and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Institute of Directors of Kenya Act, 2019.

Short title. →

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

Interpretation.

“Board” means the Board of the Institute established under section 7;

“company secretary” means the company secretary appointed under section 17 ;

“disciplinary committee” means the disciplinary committee established under section 26;

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

“member” means a member registered under section 4; and

“Registrar” means the registrar of directors under section 18.

**PART II—THE INSTITUTE OF DIRECTORS OF
KENYA**

3. (1) There is established an Institute known as the Institute of Directors of Kenya.

Establishment of
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) taking, purchasing or otherwise acquiring, holding, charging, developing and disposing of movable or immovable property;

- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) A person who is registered under this Act is a member of the Institute.

Membership of the Institute.

(2) The members of the Institute shall be classified into the following categories, namely—

- (a) a member comprising the members of the Institute registered under this Act; and
- (b) any other category as may be prescribed by the Board.

(3) Members of the Institute shall pay such fees and subscriptions as the Board may from time to time prescribe.

5. (1) Where the Board considers that a person not being a member of the Institute has rendered special services to the Institute or in furtherance of the functions and the mandate of the Institute, the Board may invite such person to become an Honorary Fellow of the Institute.

Honorary fellows.

(2) An Honorary Fellow shall not be a member of the Institute.

6. The functions of the Institute shall be to—

Functions of the Institute.

- (a) set, maintain and continuously improve the standards of learning, professional competence and professional conduct for directors;
- (b) enhance the standard and effectiveness of directors through training and education;
- (c) develop and facilitate adequate continuous training programmes for members and honorary fellows of the Institute;
- (d) determine, maintain and enhance the standards of professional practice and ethical conduct of directors;
- (e) promote the development of institutional capacity for good corporate governance in Kenya;

- (f) promote research on corporate governance and other related matters;
- (g) publish books, periodicals, journals and articles on corporate governance;
- (h) protect and promote the public interest, by providing a fair, effective, efficient and transparent procedure for the resolution of complaints against members of the Institute;
- (i) cooperate with the government and other organisations within or outside Kenya in the furtherance and performance of the functions of this Act;
- (j) maintain and update a register of members of the Institute ; and
- (k) carry out any other functions prescribed for it under any of the provisions of this Act or under any other written law.

**PART III— MANAGEMENT AND ADMINISTRATION
OF THE INSTITUTE**

7. (1) The management of the Institute shall be vested in a Board known as the Board of the Institute which shall consist of—

Board of the
Institute.

- (a) a chairperson who shall be appointed by the President from amongst the members elected under paragraph (b); and
- (b) seven other members, who shall be persons with knowledge and experience of at least five years in corporate practice elected by members of the Institute.

(2) The members of the Board shall, at the first meeting of the Board and whenever need arises, elect a vice-chairperson from amongst the members appointed under paragraph (b) of subsection 1.

(3) A person appointed and elected as a member of the Board under this Act, shall serve for a term of three years and shall be eligible for re appointment for a further and final term of three years.

(4) The chairperson, the vice-chairperson and the other members of the Board shall take office immediately after

the annual general meeting of the Institute, and shall hold office as such until the conclusion of the annual general meeting held in the third year after their election.

8. (1) A person becomes ineligible for election as a member of the Board if the person—

Disqualifications
from office.

- (a) is an undischarged bankrupt;
- (b) has his or her name removed from the register; or
- (c) has his or her certificate of competence suspended under section 28.

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

Powers of the
Board.

- (a) control, supervise and administer the assets of the Institute in such manner and for such purpose as best promotes the purpose for which the Board 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) enter into agreement with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Institute is established;
- (e) open a bank account or bank accounts for the funds of the Institute; and
- (f) invest any funds of the Institute not immediately required for its purposes.

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

Conduct of
business and
affairs of the
Board.

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

(3) The Board shall conduct its affairs in accordance with its regulations taking into account any other law relating to directors.

11. (1) The Board shall develop a comprehensive code of conduct and ethics and all members shall commit to it in writing.

Code of conduct for members.

(2) The Board shall prescribe sanctions for breach of the code of conduct developed under subsection (1).

12. The Board may appoint such officers and other staff as necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.

Staff of the Institute.

13. The Board may, by resolution either generally or in any particular case, delegate to any committee 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.

Committees of the Board.

14. (1) There shall be an Executive Director who shall be appointed by the Board through a transparent and competitive process and whose terms and conditions of service shall be determined by the Board upon the advice of the Salaries and Remuneration Commission in the instrument of appointment or otherwise in writing from time to time.

Executive Director.

(2) The Executive Director shall be the Chief Executive Officer of the Institute.

(3) A person shall be qualified for appointment under this section, if the person—

(a) has a post-graduate qualification in any of the following disciplines—

- (i)** corporate governance;
- (ii)** public administration;
- (iii)** business administration;
- (iv)** management and leadership;
- (v)** economics; and
- (vi)** law; or

(b) holds a first degree and ten years' experience in any of the following disciplines—

- (i)** corporate governance;

- (ii) public administration;
 - (iii) business administration;
 - (iv) management and leadership; and
 - (v) law; and
- (c) satisfies the requirements of Chapter Six of the Constitution of the Republic of Kenya.
- (4) The Executive Director shall—
- (a) be responsible to the Board generally for the implementation of this Act;
 - (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Institute;
 - (c) be responsible to the Board generally for supervision of staff of the Institute; and
 - (d) perform such other functions as may be provided for in this Act.

15. No matter or thing, done by a member or by any officer, employee or agent thereof shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

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

Common seal.

(2) The common seal of the Institute shall be authenticated by the signature of the chairperson of the Board and the Executive Director.

(3) 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 Institute under this section shall be presumed to have been duly given.

17. (1) The Board shall appoint a company secretary who shall be the secretary to the Board, for such term, at such remuneration and upon such conditions as the Board

Secretary to the Board.

may determine and upon the advice of the Salaries and Remuneration Commission.

(2) A person appointed under subsection (1) may be removed from office by the Board.

PART IV — PROVISIONS RELATING TO REGISTRATION

18. The Executive Director appointed according to section 15 of this Act shall be the Registrar of the Institute. Registrar.

19. (1) The Registrar shall cause to be kept a register in which shall contain— Register.

- (a) a list of names and qualifications of any person whose application under section 22 is approved;
- (b) particulars of the cancellation of the registration of any person; and
- (c) such other matters as the Board may determine.

(2) The Registrar shall, with the approval of the Institute, issue to every person registered under this Act, a certificate of competence in the prescribed form.

(3) The Registrar may cause to be made such alterations or corrections in the register in relation to any entry therein.

(4) The register may, at a reasonable hour, be inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment by—
 - (i) any member of the police force or any public officer acting in the course of his or her duty; or
 - (ii) any person authorized by the Registrar; or
- (b) on payment of such fee as may be prescribed, by the Board.

(5) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein, which are required by or under this Act to be so recorded.

20. (1) A person wishing to be registered as a member of the Institute shall apply to the Board. Application for registration.

(2) An application under this section shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Board shall approve the application if it is satisfied that the person is—

- (a) qualified to be registered under section 22 of this Act; and
- (b) not disqualified from being registered.

(4) A person who, in an application to be registered, willfully makes a false or misleading statement commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding six months or to both.

21. The Board may establish a membership committee which shall be responsible for the vetting of membership.

Vetting of membership.

22. Subject to this section, a person is disqualified from being registered as a director if the person—

Disqualifications.

- (a) is convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;
- (b) the person is an undischarged bankrupt;
- (c) the person is of unsound mind and has been certified to be so by a medical practitioner; or
- (d) during any period when the Board has determined that he or she shall not be registered or during any such period as varied by the High Court.

(2) A person shall not be treated as disqualified under subsection (1) if the Board determines that it would be unreasonable to treat him or her after considering—

- (a) the period which has lapsed since the conviction concerned; or
- (b) the circumstances of the offence.

(3) A person shall not be treated as disqualified under subsection (1) (b) if the Board is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.

(4) A person shall not be treated as being disqualified under subsection (1) (d) if the High Court allows an appeal under section this section.

24. (1) Subject to this section, the Registrar shall cancel the registration of a member of the Institute, if—

Cancellation of registration.

- (a) a determination that the registration of the member be cancelled is made under section 28;
- (b) any circumstances arise which, if the member were other than person applying for registration, would disqualify him under section 28 from being registered; or
- (c) the Registrar is required under subsection (3) to do so.

(2) The Registrar shall not cancel the registration of a member of the Institute under subsection (1) (b) unless he or she has afforded to the member an opportunity to show cause why his or her registration should not be cancelled.

(3) The Board may require the Registrar to cancel the registration of a member of the Institute who fails to comply with the requirement of section 22 (3) of the Act.

(4) When the registration of a member of the Institute is cancelled under subsection (1) (a) the Registrar shall restore the registration if, on an appeal made under section 28 (5), the High Court allows the appeal.

(5) The Board may direct the Registrar to restore the registration of a person whose registration is cancelled under subsection (1) (c) of this section and, if it does so, the Registrar shall restore such registration.

(6) The registration of a member shall be restored by recording in the register particulars of the restoration.

(7) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.

25. A person who is duly registered as a member of the Institute under this Act may be appointed to the Boards of public entities, organs, enterprises and corporations.

Appointments to public entities.

PART V—DISCIPLINARY PROVISIONS

26. (1) There shall be a committee of the Board to be known as the Disciplinary Committee.

Disciplinary Committee.

(2) The Disciplinary Committee shall consist of not less than three and not more than five members who shall be appointed by the Board.

(3) The quorum of any meeting of such committee shall be three.

(4) There shall be a chairperson of the Disciplinary Committee who shall be appointed by the Board.

(5) Subject to this section, a member of the Disciplinary Committee shall hold office for three years and is eligible for reappointment for a further final three-year term.

(6) The Board may, at any time, with or without cause, terminate the appointment of a chairperson or member of the Disciplinary Committee.

(7) Where a member of the Disciplinary Committee is unable to perform his or her functions the Board may appoint a person to replace the member for such a period as may be necessary.

(8) The Board may refer a matter to the Disciplinary Committee if it has reason to believe that any person registered as a member, either before or after that person became registered has been—

- (a) convicted by a court of law of an offence punishable by imprisonment for more than six months, the commission of which in the opinion of the Board has dishonoured him or her in the public estimation; or
- (b) convicted of or has acted in a manner amounting to professional negligence or professional misconduct in respect of his or her position as a director, including any breach of the provisions of the Act or regulations made pursuant to this Act.

27. (1) A member whose conduct has been referred to the Disciplinary Committee shall be afforded a fair hearing and may appear either in person or be represented by an advocate of the High Court of Kenya.

(2) The Disciplinary Committee may administer oaths or affirmation and may, subject to any regulations, summon and enforce the attendance of persons as witnesses and the production of books and documents or other relevant evidence, on request by either party.

Proceedings on inquiry.

(3) Subject to any regulations made under this Act, the Disciplinary Committee shall regulate its own procedure.

28. (1) Where the Disciplinary Committee determines, unanimously or by a majority of its members, that a member whose conduct has been referred to it is guilty of any of the matters referred to under section 26(8), the Committee may—

Decisions of the
Disciplinary
Committee.

- (a) issue the member with a letter of admonishment;
- (b) suspend the certificate of competence of the member for a period not exceeding three months;
- (c) withdraw or cancel the certificate of competence of the member;
- (d) impose a fine which the Board deems appropriate in the circumstances; or
- (e) remove the name of the member from the register.

(2) The Disciplinary Committee may order that a member reimburse the costs and witness expenses incurred in connection with the disciplinary hearing and such costs shall be a civil debt recoverable summarily by the Board.

(3) A member who has been suspended from acting as a director or whose certificate of competence has been withdrawn or cancelled shall from the date of such suspension withdrawal or cancellation, surrender his or her certificate to the Registrar.

(4) A member who refuses or fails to surrender his or her certificate of competence to the Registrar on request commits an offence and on conviction shall be liable to a fine not exceeding two hundred thousand shillings.

(5) A member who is aggrieved by the decision of the Disciplinary Committee or the Board in the exercise of its powers under this Act may within twenty-one days from the date of the decision appeal to the High Court.

29. (1) A member who has been suspended from acting as a director may appeal to the Board citing valid reasons for the lifting of the suspension at any time before its expiry.

Lifting of
suspension.

(2) Where the Board is satisfied that the suspension of a member should be lifted, the Board shall lift the

suspension and restore the certificate of competence of the member subject to the payment of the prescribed fee.

30. (1) 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 restored to the register.

Effect of removal of name from register.

(2) Where a person's name has been removed from the register at his or her request or with his or her consent, the name of that person shall on application and on the payment of the prescribed fee be restored to the register.

PART VII—FINANCIAL PROVISIONS

31. The funds of the Board shall comprise of—

Funds of the Institute.

- (a) such monies as may accrue to or vest in the Institute in the course of the exercise of its powers or the performance of its functions under this Act; and
- (b) donations, grants gifts and endowments from lawful organisations or sources; and
- (c) all monies from any other source provided to the Board.

32. (1) The Board shall cause proper accounts of all funds, property, assets and liabilities of the Institute to be kept, and to be audited as on the 31st December in every year.

Accounts to be kept.

(2) The audited accounts shall be presented by the Board to the annual general meeting of the Institute within three months after the end of the year

33. The Board shall present to the annual general meeting a full report of the activities of the Institute for each calendar year.

Annual report.

PART VII—MISCELLANEOUS PROVISIONS

34. Any person who willfully makes or causes to be made any false entry in, or falsification of, any register or record kept under this Act, or who procures or attempts to procure or any other person to be registered, enrolled or licensed under 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, shall be guilty of an offence and liable to a fine not

Falsification of registers rolls or records.

exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both.

35. (1) A person commits of an offence under this Act where the person knowingly or recklessly contravenes any of the provisions of the Act.

General penalty.

(2) A person who commits an offence under subsection (1) shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings.

PART VIII—TRANSITION

36. (1) The first elections to the Board shall be conducted twelve months following the commencement of this Act;

Carry-overs.

(2) The members of the Board immediately preceding the first elections under this Act shall be eligible for election in the first elections under subsection (1).

(3) For purposes of subsection (2), the Board refers to the Board to the Institute of Directors in place immediately before the enactment of this Act.

PART IX—PROVISIONS ON DELEGATED POWERS

37. (1) The Board may, subject to the provisions of this Act and to approval by a special resolution, make rules, which shall be binding on all members of the Institute, prescribing all or any of the following matters—

Regulations.

- (a) annual subscriptions;
- (b) manner of application for membership of the Institute;
- (c) grounds for, and procedure relating to, expulsion of members of the Institute;
- (d) resignation of members from the Institute;
- (e) regulation of powers exercisable by the Board and any committees or subcommittees thereof, and delegation of powers;
- (f) manner of convening meetings of the Board and committees, and quorums and procedure thereof;
- (g) manner of convening general meetings of the Institute, and quorums and procedure of such meetings;

- (h) manner of election, removal and replacement of the chairman, the vice-chairman and the other members of the Board, and of members of the Disciplinary Committee;
- (i) custody and use of the common seal;
- (j) arbitration in disputes; and
- (k) such other matters as may be deemed by the Board to be necessary for the promotion of the objects and the regulation of the affairs of the Institute.

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

- (a) the purpose and objective of delegation under this section is to enable the Board to make rules to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
- (b) the authority of the Board shall be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act (Cap 2) and the Statutory Instruments Act, 2013.

FIRST SCHEDULE**Section [10(2)]****PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD**

1. (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 member shall, at the meeting and as soon as 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 by Board Members.

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

2. 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 authorized by the Board for that purpose.

Execution of instruments.

3. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board and the Committees to be entered in books kept for that purpose.

Minutes.

4. A board member shall vacate the office where such member—

Vacation of office of a Board member.

(a) ceases to be a resident in Kenya;

- (b) becomes bankrupt or makes any arrangement or composition with his creditors;
- (c) becomes of unsound mind;
- (d) resigns his office by notice in writing to the Institute;
- (e) is absent from more than three consecutive meetings of the board without the permission of the chairperson; and
- (f) is directly or indirectly interested in any contract with the Institute and fails to declare the nature of his interest.

6. Where the chairperson, vice-chairperson or a member of the Board dies, resigns, is removed or disqualified, during their term of office, the vacancy so created may be filled by the Institute—

Filling of a vacancy in the Board.

- (a) in the case of the chairperson or vice-chairperson, from persons who are members of the Board; or
- (b) in the case of any other member, from among the members of the Institute.

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to establish the Institute of Directors of Kenya. The Bill provides for the registration and regulation of their conduct. The Institute is to issue certificates of registration to its members annually as a form of quality assurance to the public bodies, entities, enterprises and companies on whose boards its members are to be appointed.

Part I Clauses (1-2) of the Bill provides for preliminary matters including the title of the Bill and the interpretation of terms used in the proposed Act.

Part II Clauses (3-6) of the Bill provides for the establishment of the Institute. **Clause 3** establishes the Institute of Directors of Kenya while **Clauses 4-5** provides for the membership of the Institute.

Part III Clauses (7-17) of the Bill contains provisions on the administration and management of the Institute

Part IV Clauses (18-25) of the Bill contains provisions relating to the registration of members of the Institute. **Clause 17** directs the Executive Director to register members of the Institute. This part also provides for the disqualification of members for registration and cancellation of the registration.

Part V Clauses (26-31) of the Bill contains provisions relating to the discipline of the members of the Institute. It proposes the establishment of a Disciplinary Committee that will undertake the task of ensuring that registered directors undertake the practice of their profession within their professional norms and standards.

Part VI Clauses (32-34) of the Bill contains provisions relating the financial aspects of the Institute including sources of funds for the Institute, the financial year and accounting and auditing provisions.

Part VII Clauses (35-36) of the Bill contains miscellaneous provisions and in particular the falsification of registers and the general penalty to the commission of an act contrary to the Bill.

Part VIII Clause (37) of the Bill contains transitional provisions that provide for the first elections of the Board and the fate of the existing board members.

Part IX Clause (38) of the Bill provides for regulations made by the Institute for the better administration of the Institute.

The Bill does not contain any provisions limiting any fundamental rights or freedoms.

The Bill is not a Bill concerning County governments. It does not contain provisions affecting the functions, powers or finances of county governments or relate to the election of members of a county assembly or county executive.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 19th February, 2019.

CHRIS WAMALWA,
Member of Parliament.