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BUSINESS REGISTRATION SERVICE ACT

NO. 15 OF 2015

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BUSINESS REGISTRATION SERVICE ACT

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SCHEDULE —

[Section 9, Act No. 11 of 2017.]

NO. 15 OF 2015

BUSINESS REGISTRATION SERVICE ACT

[Date of assent: 11th September, 2015.]

[Date of commencement: 6th November, 2015.]

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, and for connected purposes

[Act No. 15 of 2015, Legal Notice 228 of 2015, Act No. 11 of 2017, Act No. 13 of 2017, Act No. 1 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Business Registration Service Act, 2015.

2. Interpretation

In this Act, unless the context otherwise requires—

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

“Cabinet Secretary” means the Attorney-General;

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

“Director-General” means the Director-General of the Service appointed under section 17;

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

“Registrar-General” *deleted by Act No. 11 of 2017, Sch.;*

“Service” means the Business Registration Service established under section 3.

[Act No. 11 of 2017, Sch.]

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

3. Establishment of the Service

(1) There is established the Business Registration 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 shall establish branches in every County in Kenya to ensure reasonable access of its services.

4. Functions of the Service

(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 the registration of Companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy, hire-purchase, and security rights.

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

- (a) carry out all registrations required under this Act;
- (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 out 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 functions as may be necessary under this Act.

[Act No. 11 of 2017, Sch., Act No. 13 of 2017, Sch.]

PART III – ADMINISTRATION

5. The Board of the Service

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

(2) The Board shall consist of—

- (a) a chairperson;
- (b) the Solicitor-General or his representative;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to business reforms and transformation or his representative;
- (d) the Principal Secretary in the National Treasury or his representative;
- (e) four other members; and
- (f) the Director-General, who shall be an *ex-officio* member.

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

[Act No. 11 of 2017, Sch, Act No. 1 of 2020, s. 28.]

6. Tenure of members of the Board

(1) The chairperson and a member appointed under section 5(2)(e) shall hold office—

- (a) for a term of three 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

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- (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.

7. Functions of the Board

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.

8. Powers of the Board

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 functions 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 functions 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 functions in the manner provided in section 27.

9. Meetings of the Board

(1) The Board shall conduct its business and affairs in accordance with the Schedule.

(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. Remuneration of members of the Board

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

11. Delegation by the Board

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.

12. Vacancy not to affect proceedings

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.

13. Committees of the Board

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

(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.

14. Engagement of experts and consultants

(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.

15. Protection from Personal liability

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.

16. Liability of the Board for damages

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

17. Director-General

The Board shall appoint a Director-General on such terms and conditions as may be specified in the instrument of appointment.

[Act No. 11 of 2017, Sch.]

18. Appointment of Director-General

(1) A person is qualified for appointment as the Director-General if the person—

- (a) is an advocate of the High Court of not less than ten years standing.
- (b) has at least five years' working experience at a senior management position in public affairs or in a commercial environment.
- (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 Director-General.

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

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

(5) The Director-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.

[Act No. 11 of 2017, Sch.]

19. Removal of Director-General

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

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution; or
- (e) failure to perform in accordance with agreed targets.

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

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

[Act No. 11 of 2017, Sch.]

20. Appointment of staff

(1) The Service may appoint such directors and other staff as may be necessary for the proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.

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

[Act No. 11 of 2017, Sch.]

21. Delegation powers of Director-General

The Director-General may, with the approval of the Board, delegate in writing any of his or her 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.

[Act No. 11 of 2017, Sch.]

22. The common seal of the Board

(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

23. Funds of the Service

The funds of the Service shall consist of—

- (a) money allocated by Parliament for the purposes of the Service;
- (b) such money or assets as may accrue to the Service in the course of the exercise of its powers or the discharge 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. Financial year

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.

25. Annual estimates

(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.

(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. Accounts and audit

(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.

(2) The annual accounts of the Service shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

27. Investments of funds

(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 that the National Treasury may, from time to time, approve for that purpose.

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

[Act No. 11 of 2017, Sch.]

PART VI – MISCELLANEOUS PROVISIONS

28. Annual report

- (1) The Board shall prepare an annual report 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 staff 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 publish the annual report and shall publicize the report in such manner as the Board may determine.

[Act No. 11 of 2017, Sch.]

29. Offences

- (1) A person shall not—
 - (a) obstruct, hinder or threaten a member of staff of the Service acting under this Act;
 - (b) knowingly 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 is on conviction liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

30. Regulations

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

31. Secondment of staff

- (1) Subject to subsection (2), all persons who, immediately before the commencement of this section were members of the Department of the Registrar-General engaged in the activities of the Service as set out in section 4(1) shall upon such commencement, be deemed to be on secondment to the Service.
- (2) Notwithstanding the provisions of subsection (1), within twelve months after the commencement of this section, the Service shall review the qualifications of all persons deemed to be on secondment to the Service under that subsection, and may retain those found suitably qualified for employment by the Service subject to—

- (a) such persons opting to remain in the service of the Service ; and
- (b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Service.

(3) Any employee not retained by the Service under subsection (2) may exercise his option to either—

- (a) retire from the service of the Government; or in cases where the employee has not reached retirement age, be redeployed within the public service.

(4) Where an employee enters into an agreement with the Service under subsection (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government.

[Act No. 11 of 2017, Sch.]

32. Transfer of assets and liabilities

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 in performing the services set out under section 4(1) 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.

[Act No. 11 of 2017, Sch.]

33. Pending proceedings and claims

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.

SCHEDULE

[Section 9, Act No. 11 of 2017.]

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings of Board

- 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

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 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 rules in respect thereof.

[Act No. 11 of 2017, Sch.]

2. Disclosure of interest

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

3. Contracts

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.
