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CODE OF CONDUCT

NO. 49 OF 2012

OFFICE OF THE ATTORNEY GENERAL ACT

[Date of assent: 31st December, 2012.]

[Date of commencement: 4th January, 2013.]

An Act of Parliament to make further provision for the functions and powers of the Attorney-General; to provide for the discharge of duties and the exercise of powers of the Attorney-General and for connected purposes

[Act No. 49 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Office of the Attorney-General Act, 2012.

2. Interpretation

In this Act, unless the context otherwise requires—

"Attorney-General" means the Attorney-General appointed under Article 156 of the Constitution;

"College of Arms" means the College of Arms established by section 3 of the College of Arms Act (Cap. 98);

"Council of Legal Education" means the Council of Legal Education established under section 4 of the Legal Education Act (No. 27 of 2012);

"Deputy Solicitor-General" means a Deputy Solicitor-General appointed under section 13;

"Disciplinary Tribunal" means the Disciplinary Tribunal established under section 57 of the Advocates Act (Cap. 16);

"Office" means the Office of the Attorney-General;

"public seal" means the seal referred to in Article 9 of the Constitution;

"Solicitor-General" means the Solicitor-General appointed under section 9.;

"State Counsel" means a person appointed as such under section 21 and includes the Solicitor-General and Deputy Solicitor-General; and

"subordinate officer" means a State counsel or any other member of staff employed by the Public Service Commission under this Act and discharging his or her duties in the Office.

3. Application

This Act shall apply to the Attorney-General, the Solicitor-General and subordinate officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office of the Attorney-General.

PART II – ADMINISTRATION

4. Administration of the Office

(1) The administration of the Office, the discharge of duties, the exercise of the powers and the relationship of the Office with other officers discharging legal duties in the public service shall be governed by this Act.

(2) The Attorney General shall discharge the constitutional mandate of the Office specified under Article 156 of the Constitution either in person or through a subordinate officer to whom the function is delegated.

5. Functions of the Attorney-General

(1) In addition to the functions of the Attorney-General under Article 156 of the Constitution, the Attorney-General shall be responsible for—

- (a) advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters;
- (b) advising the Government on all matters relating to the Constitution, international law, human rights, consumer protection and legal aid;
- (c) negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties for and on behalf of the Government and its agencies;
- (d) coordinating reporting obligations to international human rights treaty bodies to which Kenya is a member or on any matter which member States are required to report;
- (e) drafting legislative proposals for the Government and advising the Government and its agencies on legislative and other legal matters;
- (f) reviewing and overseeing legal matters pertaining to the registration of companies, partnerships, business names, societies, adoptions, marriages, charities, chattels, hire purchase and coat of arms;
- (g) reviewing and overseeing legal matters pertaining to the administration of estates and trusts;
- (h) in consultation with the Law Society of Kenya, advising the Government on the regulation of the legal profession;
- (i) representing the national Government in all civil and constitutional matters in accordance with the Government Proceedings Act (Cap. 40.);
- (j) representing the Government in matters before foreign courts and tribunals; and
- (k) performing any function as may be necessary for the effective discharge of the duties and the exercise of the powers of the Attorney-General.

(2) In the execution of the functions conferred by the Constitution and this Act, the Attorney-General shall provide efficient and professional legal services to the Government and the public for the purpose of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy.

6. Powers of the Attorney-General

(1) The Attorney-General shall, by virtue of his office, be the titular head of the bar and shall take precedence in court in all matters whenever he appears in accordance with the Advocates Act (Cap. 16).

(2) The Attorney-General shall, in discharging his functions under Article 156 of the Constitution have power to—

- (a) with leave of the court or tribunal, appear at any stage of proceedings, appeal, execution or any incidental proceedings before any court or tribunal;
- (b) require any officer in the public service to furnish any information in relation to any matter which is the subject of legal inquiry;
- (c) summon any officer in the public service to explain any matter which is the subject of litigation by or against the Government; and
- (d) issue directions to any officer performing legal services functions in any Government Ministry.

(3) The Attorney-General shall—

- (a) establish such directorates, divisions, sections or units in the Office as may be necessary;
- (b) establish such county or regional offices as may be necessary;
- (c) supervise the formulation of policies and plans of the Office; and
- (d) perform any other action necessary in the administrative interests of the Office.

(4) The Attorney-General may, upon request, appear and advise on any legal matter in any committee of Parliament.

(5) In the exercise of the powers and performance of functions of the Office, the Attorney-General shall not be under the direction or control of any person or authority.

7. Audience by Attorney-General in matters of public interest, etc.

(1) Despite the provisions of any written law to the contrary or in the absence of any other written law, the Attorney-General shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the Attorney-General considers—

- (a) to be of public interest or involves public property; or
- (b) to involve the legislature, the judiciary or an independent department or agency of the Government.

(2) In the exercise of the powers of the Attorney-General under subsection (1), the Attorney-General shall—

- (a) notify any court, tribunal or any other administrative body of the intention to be enjoined to the suit, inquiry or administrative proceedings; and
- (b) satisfy the court, tribunal or any other administrative body of the public interest or public property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office.

(3) Where a suit, inquiry or any other proceedings is pending before a court, tribunal or any other administrative body to which the Attorney-General does not have a right of audience, it shall be sufficient for the Attorney-General to file a certificate of the intention of the Attorney-General to be joined in the proceeding.

(4) The court, tribunal or any such administrative body shall, upon receipt of a certificate under subsection (3), enjoin the Attorney-General in the proceedings.

8. Protection from personal liability

(1) No criminal proceeding or civil suit shall be brought against the Attorney-General, the Solicitor-General or a subordinate officer in respect of any proceeding in a court of law or in the course of discharging of the functions of the Attorney-General under the Constitution and this Act.

(2) No matter or thing done by the Attorney-General, the Solicitor-General or a subordinate office shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the Attorney-General, Solicitor-General or other subordinate officer personally liable to any action, claim or demand whatsoever.

9. The Solicitor-General

(1) There shall be a Solicitor-General who shall be appointed by the President with the approval of the National Assembly.

(2) The President shall nominate a person for appointment as a Solicitor-General from among persons recommended by the Public Service Commission.

(3) A person shall be qualified for appointment to the office of Solicitor-General if the person—

- (a) is qualified to hold the office of judge of a superior court under the Constitution; and
- (b) meets the requirements of Chapter Six of the Constitution.

(4) The Solicitor-General shall assist the Attorney-General in the performance of the duties of the Attorney-General.

(5) The Solicitor-General shall carry out any function, discharge any duty and exercise any power as may be directed by the Attorney-General and shall—

- (a) organise, co-ordinate and manage the administrative and the legal functions of the Office;
- (b) assist the Attorney-General in the performance of his duties as the principal legal advisor to the Government;
- (c) conduct, or assign and supervise all court cases, including appeals or petitions on behalf of the Attorney-General; and
- (d) subject to Article 234 of the Constitution, be responsible for the discipline of State Counsel and other members of staff of the Office.

(6) In the performance of the functions and the exercise of the powers of the Solicitor-General, the Solicitor-General shall be responsible for —

- (a) organizing and coordinating the administrative and legal functions of the Office;
- (b) formulating and ensuring implementation of development strategies for Government Legal Services;
- (c) undertaking duties of alternate chairperson of the Disciplinary Tribunal;

- (d) performing duties of alternate Chairperson of the College of Arms;
- (e) performing duties as a member of the Council of Legal Education;
- (f) coordinating the attachment of candidates for pupillage in the Office; and
- (g) performing such other duties as may be conferred by law or otherwise assigned to the Solicitor-General by the Attorney-General.

10. Private practice prohibited

The Attorney-General, the Solicitor-General and State Counsel shall not engage in any other gainful employment.

11. Resignation

The Attorney-General or the Solicitor-General may resign from office in writing, addressed to the President.

12. Removal from office

(1) The President may remove the Attorney-General or the Solicitor-General from office only for—

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of their functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) Notwithstanding the provisions of subsection (1), the President may, upon election under the Constitution, appoint a person who is qualified as Attorney-General in accordance with the provisions of the Constitution and this Act.

13. Deputy Solicitors-General

The Attorney-General may, in consultation with, the Public Service Commission, appoint such Deputy Solicitors-General as the Attorney-General may consider necessary for the proper and efficient discharge of the functions of the Office.

14. Delegation by Attorney-General

(1) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the Solicitor-General or any State Counsel all or any of his powers and functions under any written law, except this power of delegation.

(2) A power or function delegated under this section may be exercised or performed by the Solicitor-General or State Counsel in accordance with the instrument of delegation.

(3) A delegation under this section may be revoked at will and does not prevent the exercise of a power or performance of a function by the Attorney-General.

15. Legal officers in Government Ministries, departments

(1) All State Counsel in any Government Ministry or Department shall be officers of the Attorney-General and shall be answerable to the Attorney-General.

(2) The Attorney-General shall have the power to issue directions to any State Counsel with regard to the manner of performing the legal functions within their respective Ministries or Departments.

**PART III – PERFORMANCE OF FUNCTIONS
OF THE ATTORNEY-GENERAL**

16. Reserve of matters to the Attorney-General

No State Counsel shall render advice in any of the following matters without the written approval of the Attorney-General—

- (a) interpretation of the Constitution;
- (b) any matter relating to international agreements and treaties;
- (c) any matter that the Attorney-General may from time to time designate;
- (d) any matter which the law reserves to the Attorney General.

17. Engagement of consultant

(1) No Ministry or Department shall engage the services of a consultant to render any legal services relating to the functions of the Attorney-General without the approval of the Attorney-General.

(2) For the purpose of observing standards, maintaining quality or capacity building, the Attorney-General may—

- (a) direct a State Counsel to participate in the work of the consultant; and
- (b) prescribe the terms and conditions for a State Counsel who participates in such consultancy.

18. Power to issue directives and practice notes

(1) The Attorney-General shall exercise powers, issue directives or practice notes to any officer to whom this Act applies for the purpose of maintaining standards and uniformity.

(2) The directives or practice notes issued pursuant to subsection (1) shall be in such form and manner as the Attorney-General may determine.

19. Reference of matter for opinion of the Attorney-General

All Government Ministries, Departments and State Corporations shall seek the opinion of the Attorney-General on any matter raising substantial legal or constitutional issues.

20. Ministries to notify the Attorney-General

All Government Ministries and Departments shall notify the Attorney-General of all material litigation within three days upon the filing of any pleadings.

PART IV – APPOINTMENT AND TERMS AND CONDITIONS OF SERVICE

21. State Counsel

(1) The Attorney-General may, in consultation with, and on the recommendation of the Public Service Commission appoint such number of State Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.

(2) A person qualifies for appointment as a State Counsel under subsection (1) if such person—

- (a) is an Advocate of the High Court of Kenya; and

(b) is a fit and proper person with due regard to the discharge of his or her duties under this Act.

(3) The Attorney-General shall comply with the values and principles under the Constitution in the appointment of State Counsel.

(4) The Attorney-General shall cause to be published in the Gazette, the names of all persons appointed as a State Counsel under subsection (1).

(5) The Attorney-General may deploy a State Counsel appointed under subsection (1) to any Ministry.

(6) The State Counsel appointed under subsection (1) shall perform such functions as may be assigned by the Attorney-General.

(7) A person shall not act as a State Counsel unless that person has been appointed as such under subsection (1).

(8) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal services functions in the public service.

22. Terms and conditions of service

The State Counsel appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission and Public Service Commission, determine.

23. Secondment

(1) The Office may, upon request, second any State Counsel to any agency, organization or institution on such terms and conditions as the Office may, in consultation with the agency to which the person is being seconded, agree upon.

(2) A State Counsel who is seconded under subsection (1) shall be deemed to be an employee of the agency, organization or institution, shall enjoy the same benefits and shall be required to comply with such orders and directions of the agency, organization or institution in the same manner as an employee who is directly recruited by that agency, organization or institution.

24. Code of conduct

(1) A State Counsel appointed under section 21 (1) shall subscribe to and observe the Code of Conduct set out in the Schedule.

(2) The Attorney-General may from time to time amend the Schedule.

(3) A State Counsel who breaches the Code of Ethics shall be liable to disciplinary action.

25. Other staff

(1) There shall be such officers and other members of staff of the Office as the Attorney-General considers necessary for the proper and efficient discharge of the functions of the Office.

(2) The Attorney-General may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the Attorney-General in the performance of the functions of the Attorney-General.

(3) The composition of the staff of the Office shall reflect the—

- (a) regional and ethnic diversity of the people of Kenya; and
- (b) gender equity.

(4) The Attorney-General shall ensure that in the appointment of staff, person with disabilities are taken into account.

PART V – MISCELLANEOUS PROVISIONS

26. Prohibition of unauthorized disclosure of information

(1) Without prejudice to the provisions of any other written law, an officer or member of staff of the Office shall not disclose or use any information gained by the officer or member of staff otherwise than in the course of the official duties of the officer or member of staff or with the authority of the Attorney-General.

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

27. Depository of laws and agreements

The Office shall be the depository of all laws and local and international documents, agreements and treaties signed for or on behalf of the Government.

28. The public seal

The Attorney-General shall have custody of the public seal of the Republic of Kenya.

29. Accessibility

The Attorney-General is entitled to have access to persons, relevant records, documents and property pertaining to a civil or criminal case, in the performance of the duties of the Attorney-General.

30. Facilities

The Government shall provide adequate facilities for the efficient functioning of the Office.

31. Annual report

(1) The Attorney-General shall, as soon as practicable after thirteenth June in each year, prepare and furnish to the President a report of the operations of the office during the year that ended on thirtieth June.

(2) The report prepared under subsection (1), shall, in respect of the year to which it relates, contain—

- (a) the financial statements of the Office;
- (b) a description of the activities of the Office; and
- (c) such other information relating to its functions that the Office may consider necessary.

(3) The Attorney-General shall cause a copy of the report furnished under subsection (1) to be laid before each House of Parliament within fifteen days after the day on which the President receives the report.

32. Regulations

The Attorney-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed or carrying out or giving effect to this Act.

33. Savings

A person who immediately before the coming into force of this Act was the Solicitor-General, a Deputy Solicitor-General, a State Counsel or a member of staff of the Office shall continue to be a Solicitor-General, a Deputy Solicitor-General, a State Counsel or a member of staff of the Office as if that person has been appointed under this Act.

SCHEDULE
CODE OF CONDUCT

[Section 24 (1).]

Ethical Values and Principles

1. Application

- (a) This Code of Ethics shall apply to all State Counsel.
- (b) This Code of Ethics shall be supplementary to the Public Service Code of Conduct and the Rules of Professional Conduct and Etiquette of the Law Society of Kenya.

2. Loyalty and Dedication

A State Counsel shall perform the functions of the Office with complete loyalty and dedication and shall not indulge in any activity that may affect the sovereignty and interests of the nation.

3. Responsibility

A State Counsel shall ensure that his personal conduct is consistent with the dignity, image and integrity of the Office.

4. Honesty

A State Counsel shall act honestly and with propriety in the performance of his duties and functions.

5. Competence

A State Counsel shall—

- (a) perform the functions and discharge duties of the Office in a competent manner;
- (b) handle matters without undue delay, risk or unnecessary expense to the Government.

6. Quality of service

A State Counsel has a duty to serve the Government and the public in a conscientious, diligent and efficient manner in order to provide quality service.

7. Fairness and Diligence

A State Counsel shall not make an official decision without first giving due consideration to the matter at hand and the impact it is likely to have on the rights and interests of the people involved.

8. Confidentiality

A State Counsel has a duty to hold in strict confidence all information concerning the business and affairs of the Government and the public generally where the information is acquired by virtue of office and except where the disclosure is expressly authorized by the Attorney-General, or required by law.

9. Integrity

A State Counsel shall—

- (a) not be influenced in any manner whatsoever by any individual or body of individuals in the discharge of his official duties;
- (b) perform the functions and discharge the duties of the Office with integrity;
- (c) respect and comply with this Act and any written law and shall conduct himself both in private and official capacities in a manner that promotes public confidence, the integrity of the Public Service, Office of the Attorney General and the legal profession;
- (d) not allow outside interest to compromise or in any way jeopardize the integrity of the legal professional, independence or competence;
- (e) at all times observe a standard of conduct that reflects credit on the legal profession and the public service and administration of justice generally; and
- (f) desist from conduct capable of drawing an impression of being involved in corruption.

10. Selflessness

A State Counsel shall take decisions solely in the interest of the nation and justice and not on any other factors.

11. Transparency

The decisions and actions of a State Counsel shall be made in a transparent manner and the State Counsel shall provide reasons for his decisions.

12. Leadership

A State Counsel shall—

- (a) at all times display high moral values and conduct himself in a manner that reflects credibility on the Office;
- (b) abide by the spirit and letter of the law; and
- (c) adhere to the ethical standards expressed in this Schedule.

13. Rule of law and the administration of justice

A State Counsel has—

- (a) a duty to promote respect for the rule of law and administration of justice;
- (b) a duty to treat the court with candour, courtesy and respect and shall not attempt to influence court decisions by use of deceptive or reprehensible methods;
- (c) a duty to deal with other lawyers fairly, courteously and in good faith; and

- (d) a duty to uphold the integrity and reputation of the legal profession and promoting principles of fairness, justice and honesty.

14. Appropriate presentation and attire

A State Counsel shall at all times in and outside the place of work appear in smart, proper and decent dress and behave in a manner befitting both the public service and the legal profession.

15. Personal Conduct

- (a) A State Counsel, shall comply with and execute laws, uphold the administration of justice and protect the integrity of public life.
- (b) A State Counsel entrusted with the responsibility to serve the nation, shall—
 - (i) refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of the Office;
 - (ii) maintain the dignity and decorum of the Office;
 - (iii) not use Government resources for personal purposes and benefits;
 - (iv) be liable for unlawful and improper behaviour or the non-performance of his duties;
 - (v) not do or direct to be done, in abuse of his office or power, any act prejudicial to the rights of another person knowing that such act is unlawful or contrary to Government policy;
 - (vi) maintain transparency in the policies of the Office and in his decisions and actions;
 - (vii) not knowingly mislead the Government on any matter of significance arising from his functions;
 - (viii) not maintain or operate a bank account in any country outside Kenya;
 - (ix) not provide information which is detrimental to the interest, territorial integrity and sovereignty of Kenya;
 - (x) protect and uphold professionalism, render decisions based on merit, and shall prohibit all forms of discrimination; and
 - (xi) not accept any gifts, presents or benefits.

16. Conflict of Interest

- (a) A State Counsel shall ensure that no conflict arises or appears to arise between his official duties and his private interests.
 - (b) A State Counsel shall not—
 - (i) appear, advise or represent any party against the Government; and
 - (ii) be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of his office.
-