

THE INDEPENDENT OFFICES BILL, 2011

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A Bill for
AN ACT of Parliament to provide the procedure for identification and
recommendation for appointment of holders of independent offices and for
connected purposes.

PART I – PRELIMINARY

Short title and Commencement **1.** This Act may be cited as the Independent Offices Act 2011, and shall come into operation on the date of assent.

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

“Gazette” means

“independent office” means the office of Auditor-General or the office of Controller of Budget as established under the Constitution;

“speaker” means

PART II — ADMINISTRATION

Incorporation of independent office. **3.** (1) An independent office shall in accordance with the Constitution, 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) acquiring, holding, charging and disposing of movable and immovable property; and

(c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act.

(3) The headquarters of an independent office shall be in Nairobi, but the independent office may establish branches at any place in Kenya.

Functions of independent offices **4.** The functions of an independent office shall be as provided in Articles 228 or 229 of the Constitution.

Powers of Independent **5.** An independent office shall have all powers necessary for the execution of its functions under the Constitution and this Act.

offices.

Qualifications of holders of independent offices.

6. (1) A person is qualified for appointment as an holder of an independent office if such person holds the qualifications provided in Articles 228 or 229 of the Constitution.

(2) No person shall be qualified for appointment as an holder of an independent office if such a person—

- (a) is a member of Parliament;
- (b) is a member of a local authority; or
- (c) is bankrupt.

Procedure for appointment of holder of an independent office.

7. (1) The President in consultation with the Prime Minister shall, within seven days of the commencement of this Act, by notice in the gazette declare vacancies in the independent offices and request for applications.

(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any –

- (a) qualified person; or
- (b) person, organization or group of persons proposing the nomination of any qualified person;

(3) The names of all applicants under subsection (2) shall be published in the Gazette;

(4) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a Committee comprising of representatives from the —

- (a) Cabinet Office;
- (b) Office of the Prime Minister;
- (c) Ministry of Justice, National Cohesion and Constitutional Affairs;
- (d) State Law Office;
- (e) Ministry of State for Public Service; and
- (f) Public Service Commission,

for the purposes of considering the applications and short listing at least three persons qualified for appointment as Auditor-General or Controller of Budget as the case may be;

(5) The Public Service Commission shall within seven days forward the shortlisted names to the President and the Prime Minister for nomination.

(6) The President in consultation with the Prime Minister shall nominate within seven days the holder of an independent office and transmit the name to the National Assembly;

(7) The National Assembly shall, within fourteen days consider the nominations received under subsection (6) and approve or reject the nomination;

(8) Upon consideration and approval or rejection by the National Assembly, the Speaker shall within seven days forward the names of approved persons to the President for appointment;

(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and the Prime Minister to submit fresh nominations.

(10) Where a nominee is rejected by Parliament under subsection (7), the President in consultation with the Prime Minister shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons short listed and forwarded by the Public Service Commission under subsection (5).

(11) The President shall, within seven days, by notice in the gazette, appoint the holder of an independent office approved by the National Assembly.

Tenure of office. of **8.** The term of office of the holder of an independent office shall, unless the office falls vacant earlier owing to any reason specified in the Constitution or section 11 of this Act, be as provided in Articles 228 or 229 of the Constitution.

Vacancy. **9.** (1) The office of the holder of an independent office shall become vacant if the holder—

(a) dies;

(b) by a notice in writing addressed to the President resigns from

office;

(c) is convicted of an offence and sentenced to imprisonment;

(d) is unable to discharge the functions of his office by reason of physical or mental infirmity; or

(e) is declared bankrupt.

(2) The holder of an independent office may be removed from office in accordance with Article 251 of the Constitution.

(3) The President shall notify every resignation, vacancy or termination in the Gazette within seven days.

Filling of vacancy. **10.** Where a vacancy occurs in an independent office in accordance with section 9, the President in consultation with the Prime Minister shall nominate a member for approval by the National Assembly in accordance with section 7.

Oath of office. **11.** The holder of an independent office shall each make and subscribe before the Chief Justice the oath or affirmation set out in the First Schedule.

Terms and conditions of service. **12.** The remuneration and benefits payable to or in respect of an holder of an independent office shall:

(a) be a charge on the Consolidated fund.

(b) not be varied to the disadvantage of the holder during his or her term of office.

Appointment of Staff. **13.** (1) An independent office may appoint such officers and other staff as are necessary for the proper discharge of the functions of the office under this Act, upon such terms and conditions of service as the office shall deem fit.

(2) The officers and other staff appointed under subsection (1) shall serve on such terms and conditions as the independent office may determine.

(3) The government may, upon request by an independent office, second to the independent office such number of public servants as may be necessary for the purposes of the office.

(4) A public servant seconded to an independent office shall, during the period of secondment, be considered an officer of the independent office and shall be subject only to the direction and control of the independent office.

The common seal.

14. (1) The Common seal of an independent office shall be kept in such custody as the independent office shall direct and shall not be used except on the order of the independent office.

(2) The common seal of an independent office 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 independent office under this section shall be presumed to have been duly given.

Protection from personal Liability.

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

PART III — FINANCIAL PROVISIONS

Funds of independent office.

16. The funds of an independent office shall consist of—

- (a) monies provided by Parliament for the purposes of the independent office;
- (b) such monies or assets as may accrue to the independent office in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided, donated or lent to the independent office.

Bank accounts

17. An independent office shall open and maintain such bank accounts as are necessary for the exercise of its functions.

Financial year.

18. The financial year of an independent office shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

19. (1) Before the commencement of each financial year, an independent office shall cause to be prepared estimates of the revenue and expenditure of the independent office for that year.

(2) The annual estimates shall make provision for all the estimated

expenditure of the independent office for the financial year concerned and in particular, shall provide for—

- (a) The payment of the salaries, allowances and other charges in respect of the staff of the independent office;
- (b) The payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the independent office;
- (c) The maintenance of the buildings and grounds of the independent office;
- (d) The funding of training, research and development of activities of the independent office;
- (e) The 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 independent office may think fit.

Accounts and audit **20.** (1) An independent office shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the independent office.

(2) Within a period of three months after the end of each financial year, the independent office, other than the Auditor-General, shall submit to the Auditor-General the accounts of the independent office in respect of that year together with a —

- (a) statement of the income and expenditure of the independent office during that year; and
- (b) statement of the assets and liabilities of the independent office on the last day of that financial year.

Act No. 12 of 2003 (3) The annual accounts of an independent office shall be prepared, audited and reported upon in accordance with the provisions of the constitution and the Public Audit Act, 2003.

PART VI — MISCELLANEOUS PROVISIONS

Annual report. **21.** (1) An independent office shall prepare a report after each financial year and submit the report to the President and Parliament.

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

- (a) the financial statements of the independent office;
- (b) a description of the activities of the independent office;
- (c) such other statistical information as the independent office considers appropriate.
- (d) any other information relating to its functions that the independent office considers necessary.

(3) An independent office shall cause the annual report to be published in the Gazette and in such other manner as the independent office may determine.

(2) An independent office shall submit a report on any issue whenever so requested by the President, the National Assembly or Senate.

Regulations.

22. An independent office may make regulations generally for the better carrying into effect of the provisions of this Act.

FIRST SCHEDULE

(S 11)

OATH/AFFIRMATION OF THE HOLDER OF INDEPENDENT OFFICE

I having been appointed (the Controller of Budget/Auditor-General under the Independent Offices Act, 2011, do solemnly (swear/ declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day of

Chief Justice.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to provide for the qualifications and appointment procedure of the holders of independent offices, namely the Controller of Budget and the Auditor-General under Articles 228, 229 and 250 of the Constitution.

The Constitution establishes a presidential system of Government. In such models, appointment to key offices originates from the Executive. Under Art 250 the role of Parliament is to approve the person nominated by the Executive.

Part II provides for the powers and functions of the independent offices as provided for under the Constitution. **Clause 6** provide for the qualification of the holder of an independent office.

Clauses 7 provide a transparent and competitive procedure of appointment and require the President to declare the vacancies at an independent office in the Gazette. Interested persons apply through the Public Service Commission which is required to convene a Committee to identify and shortlist persons qualified to hold an independent office. The Committee is required to forward the names of the shortlisted person to the President who shall in consultation with the Prime Minister nominate persons qualified for appointment and transmit the names to the national assembly for Approval. Upon approval by the National Assembly, the President shall appoint the holders of independent offices.

Part III provides for the financial affairs of the independent offices.

Part IV deals with miscellaneous matters. **Clause 25** requires an independent office to prepare and present its annual report. The report is to be forwarded to the President and Parliament and is made available to the public.

Dated 7th March 2011.