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**THE KWALE COUNTY WATER AND SANITATION SERVICES
ACT, 2020**

No 2 of 2020

Date of Assent 10th March 2020

Date of commencement See Section 1

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FIRST SCHEDULE**CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD
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**THE KWALE COUNTY WATER AND SANITATION SERVICES
ACT, 2020**

AN ACT of the County Assembly of Kwale to provide the legal and institutional framework for provision of water and sanitation services in the county and for connected purposes

ENACTED by the County Assembly of Kwale as follows—

PART 1 – PRELIMINARY

Short Title and commencement

1 This Act maybe cited as the Kwale County Water and Sanitation Services Act, 2020 and shall come into operation on the date of publication in the *Gazette*

Interpretation

2 In this Act, unless the context otherwise requires—

“Authorized officer” means an authorized officer appointed under Section 8,

“Board” means the Board of the County Water Service Provider established under Section 10,

“Catchment” means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland

“Chief officer” means the Chief Officer for the time being responsible for water services,

“Community water service” means water services provided by a community association on a self-help basis

“County Water Service Provider” means the County Water Service Provider established under Section 8,

“County entity” means an entity of the County Government recognized as such under the provisions of the Public Finance Management Act, 2012,

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for water and sanitation services in the county,

“County Executive Committee” means the county executive committee provided for under Article 179 of the Constitution of 2010,

“County water services provider” means a water services provider established by the County Government as a county government entity for the provision of water services within the county,

“Department/s” means the Department/s of Water and Sanitation Services established under Section 7,

“Fund” means the Water and Sanitation Services Fund established under Section 68,

“Gazette” means the Kenya Gazette published by the Government Printer,

“Governor” means the County Governor of Kwale in terms of Article 179(4) of the Constitution of Kenya 2010,

“Master plan” means a dynamic long-term planning document that will provide the county’s conceptual layout to guide future growth and development of water and sanitation services,

“Public officer” means a person serving as a public officer in the County Government of Kwale or any of its agencies,

“Public works” in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines,

“Regulatory Board” means the Water Services Regulatory Board established by the Water Act 2016, or its successor,

“Riparian land” means the boundary between land and a river or stream,

“Sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services,

“Service agreements” means an agreement entered between the county water services provider and the department,

“Sewerage services” means the provision of a piped network for the transport and or movement of wastewater for treatment and or final disposal offsite,

“Sanitation” means treatment and or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soak away pits, exhauster services and similar systems but does not include sewerage services,

“Sector wide forum” means the water and sanitation services sector wide forum established under Section 60,

“waste water” means water that has been used in the home, in a business, or as part of an industrial process,

“Waste water management” means the process in which waste water will be collected, treated, and discarded from residential, industrial and commercial sources within the county,

“Water services” means the provision of water and or sewerage services for domestic, commercial, industrial, agricultural or other purpose and includes the supply of water for multiple uses,

“Water services provider” means an entity providing water and or sewerage services as a business but excludes an establishment providing water services to persons resident within the premises of the establishment,

“water works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, drilling and equipping, water distribution, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, drainage of any swamp or other land

Application, Objects and Purposes of the Act

3 (1) This Act shall apply to the provision of water and sanitation services in Kwale County

(2) The Act gives effect to the Constitution and national law as regards the provision of water and sanitation services by the County Government of Kwale. The object and purpose of this Act is to provide for a legal framework for implementation of sections 10 (a) and 11 of part 2 of the Fourth Schedule to the Constitution and Article 43 (1) (b) and (d) in order to—

- (a) ensure equitable and continuous access to clean and safe water,
- (b) promote soil and water conservation,
- (c) promote water catchment conservation and protection,
- (d) provide for the development and management of county water services public works,
- (e) provide for coordination and regulation of county water and sanitation public works,
- (f) ensure effective and efficient provision of water and sanitation services,
- (g) promote effective and efficient management of storm water in built up areas,
- (h) enhance sustainable management of water resources,

- (1) promote interagency collaboration and public participation in water resource development and management

(3) The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other law

Guiding Principles and Values

4 The County Executive Committee member, the county water services provider and any person administering or applying this Act shall be guided by the principles and values of the Constitution set out hereinafter

- (a) national values and principles of governance in Articles 10,
- (b) the right of every person to clean and safe water in adequate quantities in Article 43(1)(d), and
- (c) the values and principles of public service in Article 232

PART II— POLICY, COORDINATION AND SUPERVISION OF WATER SERVICES

Powers and Duties of County Executive Committee member

5 (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and oversight over the development and provision of water and sanitation services within the county

(2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to—

- (a) formulate and periodically review county policies, strategies and plans for the development and provision of water services,
- (b) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national law on the provision of water and sanitation services,
- (c) coordinate and oversee the development and provision of water and sanitation services within the County”
- (d) mobilize financial and other resources for the provision of water and sanitation services, and
- (e) prepare a report for the County Assembly quarterly, and from time to time as may be necessary, on the state of water and sanitation services in the county

(3) In the performance of [his][her] functions and duties under this Act the County Executive Committee member shall—

- (a) consult and coordinate with departments, agencies and entities of the national and county government whose functions affect the development and provision of water and sanitation services, and
- (b) consult with relevant stakeholders including non-governmental organizations, the private sector and consumer groups

(4) In the discharge of his/her duties and functions under this Act, the County Executive Committee member shall be assisted by the Department of Water and Sanitation Services established under this Act

County Water and Sanitation Services Strategy

6 (1) Following public consultation the County Executive Committee member shall formulate a County Water and Sanitation Services Strategy

(2) The County Water and Sanitation Services Strategy shall provide—

- (a) information on areas within the county in which access to basic water and sanitation services is inadequate,
- (b) plans and measures for the development and continuous improvement of water and sanitation services within the county,
- (c) an investment programme and a timeframe for the development, expansion and improvement of water and sanitation services in the county,
- (d) institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas,
- (e) measures to facilitate the provision of water and sanitation services by private sector water service providers and community water service providers, and
- (f) criteria and procedures for the provision by the county government of financial, technical and other assistance to community water service providers

(3) The strategy with the approval of the County Assembly shall be published in the Gazette after approval by the County Executive Committee

(4) The county water services strategy shall be reviewed periodically and in any case not later than every five years

(5) Every county public officer and every county organ shall give effect to the gazetted county water and sanitation services strategy in the discharge of his/her or its duties under this Act

(6) Every private water services provider and every community water service provider shall take account of the county water services strategy in its plans and programmes

The Department of Water and Sanitation Services

7 (1) There shall be an office in the County Public Service of the Department of Water and Sanitation Services

(2) The County Executive Committee member shall, in consultation with the County Public Service Board,¹ determine the staff establishment required by the Department to effectively perform its functions under the Act

(3) The duties and functions of the Department shall be to—

- (a) provide technical support and advice to the County Executive Committee member in the discharge of his/her functions,
- (b) implement and give effect to the county water and sanitation services strategy,
- (c) in cooperation with other government agencies coordinate and regulate development of infrastructure and systems for water and sanitation services in the county,
- (d) issue authorization to any person intending to carry out any water and sanitation works similar to the public works defined under this Act,
- (e) regulate use or access to land for the purposes of water conservation,
- (f) issue permits and regulate the provision of sanitation services,
- (g) subject to national legislation, implement a system and requirements for registration of water services providers operating within the county,
- (h) subject to national legislation, formulate rules, standards and guidelines for the provision of water services within the county,
- (i) in consultation with the Water Services Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county,
- (j) gather, collate and analyze information and disseminate data on water and sanitation services in the county,

- (k) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water and sanitation services,
- (l) provide technical and other support to water service providers,
- (m) receive and address complaints regarding the provision of water services,
- (n) perform such other duties and functions in relation to the provision of water and sanitation services as are assigned to it by the County Executive Committee member
- (o) maintain collaboration and cooperation with other government agencies and other county governments in carrying out its functions
- (p) in collaboration with the national or other county governments initiating, developing, coordinating and managing policies, strategies and plans for water resources management and sanitation services,
- (q) facilitating public awareness and participation on sustainable water resources, sanitation and storm water management,
- (r) promoting and facilitating adoption and use of water conservation systems and methods, including water harvesting,
- (s) developing and coordinating implementation of water and sanitation services management information system,
- (t) develop and promote policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector,
- (u) mobilization of resources for water resources management and development and sanitation services,
- (v) developing performance management system and overseeing its implementation by the agencies established under this Act,
- (w) monitoring and evaluating the implementation of this Act and the water sector,
- (x) conducting and facilitating research and appropriate surveys for water resources management and facilitating dissemination and implementation of research findings,
- (y) acting as the repository of information and data on water sector, and

- (z) advising the County Executive Committee Member on the necessary policy to be adopted for sustainable water resources management

PART III—ESTABLISHMENT AND OPERATION OF WATER SERVICES PROVIDERS

Establishment of county water services provider

8 (1) The county government shall, following a resolution of the County Assembly, by notice in the Gazette, establish one or more county entities as a water and sewerage services provider or providers as the case may be—

(2) A county water services provider established under this section 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) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property,
- (c) borrowing money or making investments,
- (d) entering into contracts, and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate

(3) The County Executive Committee member shall assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government

(4) In determining the area of supply of a county water services provider the County Executive Committee member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers

(5) Following the establishment of a county water services provider the assets, facilities and other infrastructure used for the provision of water and sanitation services within the water services provider's water supply area which belong to the county government shall be transferred or leased to the water services provider

(6) Where the assets for the provision of water services in the supply area belong to a community water services provider the county water services provider may enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of

which may provide that the community water services provider continues to provide water services as an agent of the county water services provider

(7) The county shall establish four water services providers in the county one for each sub county

Functions of the county water services provider

9 (1) A county water and sanitation services provider established under this Act shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure and facilities, within its water supply area

(2) The county water and sewerage services provider shall have the exclusive right to provide water services within its area of supply

(3) The performance by a county water services provider of the functions set out in this Act shall be subject to the requirement to obtain and maintain a licence issued by the Regulatory Board under the Water Act, 2016

(4) Developing and managing works for water conservation,

(5) Promote or develop and manage water recycling systems,

(6) Promote efficient water use and management for sustainable development,

(7) Identify, initiate and promote water conservation systems, strategies and programs,

(8) In collaboration with other agencies, develop and manage public infrastructure for storm water management,

(9) Maintain database related to water and sanitation services,

(10) Disseminate information related to water and sanitation services,

(11) Maintain collaboration and cooperation with other government agencies and other county governments in carrying out its functions

(12) A county water services provider established under the Act may, with the approval of the County Executive Committee, contract out the whole or aspects of its functions to a private water services provider, a community water services provider or another county entity which has the requisite capacity to provide water services

The governance of water service providers

10 (1) Each county water services provider shall have a Board of Directors comprising a minimum of seven (7) and a maximum of eleven (11) members which shall guide and direct the performance of its functions

(2) The rules and procedures of the county government on the appointment, composition and qualifications of members of the board of directors of a county water services provider shall give effect to standards and guidelines prescribed by the Regulatory Board

(3) The Board of the County Water Service Provider shall consist of—

- (a) a non executive chairperson appointed by the Governor with approval by the County Assembly
- (b) the Chief Officer for time being responsible for water services,
- (c) the Chief Officer for the time being responsible for finance,
- (d) four persons nominated by water users from the sub county (one from each sub-county) and appointed by the County Executive Committee member,
- (e) the Chief Executive Officer who shall be the secretary of the Board,
- (f) three persons appointed by the County Executive Committee Member by virtue of their knowledge, expertise and experience in water and sanitation management matters one of whom must be of either gender

(4) A person shall be qualified for appointment as chairperson or a member appointed under subsection (3) (f) if the person—

- (a) holds at least a Degree in matters relating to water and sanitation from a recognized institution,
- (b) has knowledge and experience of at least five years in matters relating to water resources management, water and sanitation services management or any other related field,
- (c) meets the requirements of Chapter Six of the Constitution, and has had a distinguished career in their respective fields

(5) A person shall be qualified for appointment as a member under sub section (3) (d) if the person—

- (a) holds at least a postsecondary certificate from a recognized institution,

- (b) has knowledge and experience of at least 2 years in matters relating to water resources management, local development, or any other related field,
- (c) meets the requirements of Chapter Six of the Constitution, and
- (d) is a resident of the sub county

(6) The term of the Board of the county water and sanitation services provider shall be three years which term shall not be affected by the expiry of the term of office of the county government

(7) In appointing the members under Section 10 (3) (a) and (f) the water users and the county executive committee member shall consider the one third gender rule and inclusion of marginalized groups and persons living with disabilities

(8) The chairperson/members of the board may vacate or be removed from office on any of the following grounds—

- (a) upon expiry of the term of office,
- (b) upon submission of a written resignation notice to the appointing authority,
- (c) unable to perform his or her duty due to physical or mental incapacity as certified by a registered medical practitioner,
- (d) death,
- (e) gross violation of the constitution or any other written law,
- (f) declared bankrupt, and
- (g) upon conviction of a criminal offence whose terms exceeds six-month imprisonment

(9) Where a vacancy occurs in the membership of the board in accordance with section 8 or the first schedule the appointing Authority shall appoint a new member in accordance with the provisions of this act

Meetings and Procedure of the Board

11 The First Schedule shall have effect in relation to the meetings and procedures of the Board

Functions of the Board

12 The functions of the Board shall be to—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the County Water Services Provider ,

- (b) advise the management of the County Water Services Provider generally on the exercise of the powers and the performance of the functions of the County Water Services Provider,
- (c) approve the estimates of the revenue and expenditure of the County Water Services Provider , and
- (d) perform such other functions as are provided for under this Act or any other written law

Conduct of business of the Board

13 (1) The conduct and regulation of the business and affairs of the Board shall be as set out in First Schedule

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

Remuneration of the Board

14 The remuneration of the members of the Board shall be as determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission

Chief Executive Officer and other employees of county water services providers

15 (1) A County Water Services Provider shall employ a Chief Executive Officer who is competitively recruited by its Board

(2) To qualify for appointment as a chief executive officer, a person must—

- (a) possess a degree in a relevant field from a recognized university,
- (b) have had experience in management for a period of not less than five years

(3) The chief executive officer shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years

(4) The Chief Executive Officer shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the County Water Services Provider

(5) The Chief Executive Officer shall be an *ex-officio* member of the Board of Directors

(6) The Chief Executive Officer may—

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board,
- (b) be removed from office by the County Executive Committee Member on recommendation of the Board, for—
 - (i) serious violation of the Constitution or any other written law,
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise,
 - (iii) physical or mental incapacity to perform the functions of office,
 - (iv) incompetence,
 - (v) bankruptcy

(7) A County Water Services Provider may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve

(8) A person employed by a County Water Services Provider shall be a public officer and subject to the laws governing the conduct of public officers

Finances of county water service providers

16 (1) The funds and assets of a County Water Services Provider shall consist of—

- (a) such monies as may be appropriated by the County Assembly for the purposes of the County Water Services Provider,
- (b) any monies or property which may in any manner accrue or vest in the County Water Services Provider in the course of the exercise of its functions under this Act,
- (c) such monies as may become payable to the County Water Services Provider by way of fees and other charges in respect of services rendered by or through it, and
- (d) all monies from any other sources provided whatsoever donated, lent or granted to the County Water Services Provider

(2) The County Executive Committee may set up a dedicated fund into which the county government and others may place funds for supporting the provision of water services to underserved areas

(3) The rules governing the operation of the fund shall be prescribed by the County Executive Committee member in consultation with the County Executive Committee member in charge of the County Treasury

The common seal of the County Water Services Provider

17 (1) The common seal of the County Water Services Provider shall be kept in the custody of the Chief Executive Officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board

(2) The common seal of the County Water Services Provider, 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 by the Board under this section shall be presumed to have been duly given

(3) The common seal of the County Water Services Provider shall be authenticated by the signature of the chairperson of the Board and the Chief Executive Officer

(4) The Board shall, in the absence of either the chairperson or the chief executive officer, in any particular matter, nominate one member of the Board to authenticate the seal of the County Water Services Provider on behalf of either the Chairperson or the Chief Executive Officer

Protection from personal liability

18 (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the County Water Services Provider shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the County Water Services Provider under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done bona fide be paid out of the funds of the County Water Services Provider, unless such expenses are recovered by him or her in such suit or prosecution

Liability for damages

19 The provisions of section 13 shall not relieve the County Water Services Provider of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works

Public awareness

20 The County Water Services Provider shall in carrying out its functions—

- (a) provide public education and awareness on efficient and sustainable water use,
- (b) invest in water source protection and conservation

Public Private Partnership

21 The County Water Services Provider, with approval of CEC Member for Finance and CEC Member responsible for Water Services, may enter into public private partnership in order to effectively carry out its functions in accordance with the Public Private Partnership Act

Annual estimates of County Water Services Provider

22 (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider in accordance with its functions and powers under this Act, for the financial year concerned

(3) The Board shall submit the estimates to the County Executive Committee member, who shall present the estimates for consideration and approval by the County Assembly

(4) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved under this section

Accounts and audit

23 (1) The board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities

(2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with –

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

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of

Article 226 and 229 of the Constitution and applicable national and county government legislation

Register of water service providers

24 (1) The Department shall maintain a register of all water service providers operating within the area of jurisdiction of the county

(2) For purposes of the register each water services provider shall, within 12 months of commencement of the Act or, in respect to water service providers established after the commencement of the Act, of its establishment or such longer period as the Executive Committee member may allow, submit to the Department information on—

- (a) its area of supply,
- (b) the number and location of customers served,
- (c) an inventory of the facilities and infrastructure available to it for the provision of water services,
- (d) particulars of its board of directors or management committee and staff including the technical qualifications of its staff,
- (d) the tariff charged,
- (e) particulars of liabilities,
- (f) its licence status with the Regulatory Board and, if licensed, a copy of the licence,
- (g) plans and programmes for the improvement of water services it provided, and
- (h) such other information as the Executive Committee member may by regulations prescribe

(3) By the end of March of each calendar year the water services provider shall notify the Department of material changes to the information provided in the previous year and the Department shall as soon as practicable thereafter update the register

PART IV—WATER SERVICES

Supply of Water

25 The County Water and Sanitation Services shall progressively ensure that —

- (a) every person has access to safe and clean water for domestic use within a reasonable distance,

- (b) there is accessible water for agricultural, livestock, wildlife and industrial use,
- (c) equitable distribution of water between consumers in urban and rural areas

Service agreements

26 (1) The County Water Services Providers shall enter into a Service Provision Agreements with the Department in consultation with the board of the service provider

(2) The Service Provision Agreements shall have a life span as determined by the County Executive Committee Member

Development of Water Works

27 (1) The County Water Services Providers may for the purposes of carrying out its functions erect or develop waterworks and public works on a public or private property

(2) Notwithstanding provisions of subsection (1), the County Water Services Providers shall seek consent of the owner of private land or the relevant government agency occupying or in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation

(3) The County Water Services Providers shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out

(4) The County Water Services Providers shall seek easements from owner or occupier of any land for construction of water works or public works to be undertaken on such land

County scheme

28 (1) The County Water Services Providers may with the approval of the executive committee member initiate a county scheme to provide services under this Act for public benefit

(2) Where the County Water Services Providers deem necessary to erect or establish such a scheme or related public works on private property or land, the county government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition

(3) A county scheme shall take precedence over any private or community scheme

Tariffs for water and sanitation services

29 (1) Subject to the national policy and such requirements as may be imposed under national law, tariffs for the provision of water services to urban areas shall be set on the basis of full cost recovery while tariffs for the provision of water services to rural areas may be set on the basis of the full recovery of operation and maintenance but not capital costs

(2) The county government may in appropriate cases provide financial assistance to enable water services providers which satisfy the criteria stipulated in the water services strategy meet a portion of its operation and maintenance costs

(3) Subject to national legislation a water services provider may impose a charge for accepting into its sanitation system and treating wastewater from industrial and other trade premises within its supply area

(4) Water services providers which provide desludging and or exhauster services may impose a charge for treating the sludge and or wastewater

(5) Not less than 14 days prior to the due date of payment a water services provider shall avail a bill or other invoice to each of its customers prepared whenever practicable on the basis of metered supply

(6) The tariffs and user charges imposed or levied under this section shall be subject to approval by the County Executive Committee

Ring fencing of revenues

30 (1) All funds of the county water services providers and all revenues arising from provision of water services by county water services providers shall not form part of the general revenues of the county government but shall be retained by the water services providers for their purposes

(2) Any excess of revenue over expenditure at the end of the financial year shall not be paid over to the county government but shall be retained by the county water services providers to be used for the improvement of water services within the area of supply of the county water services provider

(3) Every water services provider shall establish and maintain a contingency fund into which it shall pay a portion of its revenues to be used to pay for emergency repairs and meet the costs arising from unforeseen occurrences which can disrupt the provision of water services

Private sector participation

31 (1) Subject to compliance with the requirements of applicable national law county water services providers may, in an appropriate case, engage in a public private partnership for development of water services infrastructure and or the provision of water and or sanitation services

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water and or sanitation services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement shall be vested in and be owned by the county government or county water services provider as appropriate

(3) The county government may with the approval of its assembly and the Regulatory Board and subject to compliance with applicable national and county legislation divest itself of the assets and liabilities for the provision of water services to a private water services provider

Customer relations

32 (1) Water services providers shall at all times maintain a customer relations system including a feedback and grievance resolution system

(2) Water services providers shall formulate and regularly review a service delivery charter, including implementation mechanisms

Interruptions in water services

33 (1) On each occasion of a planned interruption water services providers shall notify its customers who are likely to be affected by the interruption not less than 24 hours prior to the planned interruption and shall indicate the expected duration of the interruption

(2) Where an unplanned interruption occurs to water services, the water services providers shall notify its customers as soon as reasonably practicable and in any event not less than 12 hours after the discovery of the interruption, and keep customers fully apprised on the progress being made to redress the cause of the interruption and the expected time and or day of resumption of normal service

(3) Where an interruption in services extends for a period longer than 14 [or other appropriate period] days the water services providers shall take remedial measures to provide consumers with a basic supply of water through bowsers and other mobile means

PART V— INSPECTION, EVALUATION AND MONITORING**Power of entry and inspection**

34 (1) A water services provider shall establish and maintain an inspectorate service with adequate resources and staff

(2) An inspector employed by the water services provider may enter any premises to which it provides water and or sewerage services in order to inspect and monitor

(a) the distribution system

(b) the metre(s)

(c) water storage systems

(d) the sewerage system

(e) such other elements of the water and sewerage services as the County Executive Committee member, may, through regulations, authorize

(3) An inspection may only be undertaken between the hours of 8am and 6pm except in an emergency

(4) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector

(5) Where the water and sanitation services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and or sanitation services in any premises, it shall apply to the appropriate court for a warrant to enter and search the premises

(5) Nothing in this sub-section (4) shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question

Evaluation and monitoring of water service providers

35 (1) The County Executive Committee member shall, on an annual basis, with the technical assistance of the Department and in consultation with the Regulatory Board, undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance with the county water services strategy and performance targets

(2) The County Executive Committee member shall, on the basis of recommendations of the monitoring and evaluation report, take

appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sewerage services provided by water services providers operating in the county

PART VI—OFFENCES

Offences by employees

Cap 63

Cap 65

Cap 183

36 (1) Employees of a county water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties

(2) Notwithstanding (1) above, any actions of employees of a county water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment

(3) It is an offence for a employee of the water services provider to willfully fail to—

(i) read a metre when it is [his] [her] duty to do so,

(ii) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider,

(iii) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services,

(4) It is an offence for an employee of a water services provider to collude with other persons to allow or assist such persons illegally to access and use water services contrary to rules set by the water services provider

(5) Upon conviction for an offence under this section the person shall be liable to a sentence of not less than three months imprisonment or a fine not less than thirty thousand shillings, or both such fine and imprisonment

(6) For purposes of this section, an employee of a water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this section

Impersonation of staff of the water services provider

37 Any person who impersonates an employee of a water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of not less than six months imprisonment, or a fine not less than Thirty Thousands shillings, or both such fine and imprisonment

Vandalism of water and sanitation services infrastructure

38 (1) Any person who willfully vandalizes, damages, or destroys infrastructure or a facility of a water and sewerage services provider shall be guilty of an offence and, on conviction, shall be liable to a sentence of not less than six months imprisonment or a fine of not less than thirty thousand shillings or both such fine and imprisonment

(2) Upon conviction for a second or subsequent offence involving the willful destruction or vandalism of infrastructure or facilities belonging to a water services provider the offender shall be liable to imprisonment for a term not exceeding two years, or a fine of not less than One Hundred Thousand shillings, or both such fine and imprisonment

(3) A toll free hotline number shall be provided for reporting vandalism

Illegal connection to water services

39 (1) Any person who illegally connects to, diverts and utilizes for any purpose, water and or sewerage services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term not exceeding one year or a fine of not more than One hundred Thousand Shillings or both such fine and imprisonment

(2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider

Contamination of water and supply to domestic premises

40 (1) Any person who willfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty of an offence and upon conviction shall be liable to imprisonment for a period of not less than six months or to a fine of not less than fifty thousand shillings or both such fine and imprisonment

(2) Any person who supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable on conviction to imprisonment for six months or a fine of not less than Fifty Thousand shillings of both such fine and such imprisonment

PART VII— ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

Raw water abstraction permits and access rights

41 (1) A county water services provider shall ensure the availability and development of sources of water for abstraction as necessary to enable the water services provider supply adequate quantities and quality of water to its consumers

(2) A water services provider shall apply for and secure an abstraction permit from the relevant national regulatory authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the support of the County Executive Committee member, make arrangements for the purchase of water in bulk

Application for permit

42 An application for a permit under Section 41 shall, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Coordination Act, 2015 and shall specify among others—

- (a) the purpose and nature of the works to be undertaken,
- (b) the nature of works to be carried out,
- (c) the duration within which the works are expected to be completed

(2) The Department shall, where the construction of works will be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application

(3) A person may lodge an objection to application for a permit

(4) Every objection to an application shall be made in writing to the Chief Officer setting out the grounds for such an objection

(5) The Department shall, upon receiving the application either give its no objection or object to the applicant for a permit

(6) The Department may, where appropriate conduct public hearings on the objection

(7) An objector or an applicant for a permit may appear personally or by an advocate at the hearing of an application

(8) The Department shall consider the application within thirty days of such an application and may where it is satisfied that the applicant does not have an adequate supply for the water services provider grant its no objection to the issue of the permit subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees

(9) Where the Department is not satisfied that the applicant does not have adequate supplies from the water services provider, it may—

(a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject, or

(b) make comments and recommendations thereon and return it to the applicant within thirty days

(10) An applicant to whom the application is returned under subsection (9) (b) may re-submit the application within sixty days

(11) On receipt of any revised application under subsection (10), the Department shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit

Water Works condition

43 Notwithstanding Section 42, the Department shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of waterworks

Non interference and restoration after construction works

44 A person who carries out any construction works under this Act on any public property shall ensure that—

(a) there is no interference with the normal usage of any part of property or land,

(b) necessary measures are taken to prevent members of the public from being exposed to any danger or harm as a result of such works,

- (c) any parcel of land or property where the works were taking place are restored to its original state

Register of permits

45 (1) The Department shall maintain a register of permits issued under this Act, which shall include all details related to the permit

(2) The register of permits shall be accessible to members of the public upon payment of the prescribed fees

Water services audit

46 (1) The County Water Services Provider board in collaboration with the Department shall audit and assess the number of persons providing water services in the county whether the persons are authorized or not

(2) The Department shall submit the data and information collected under this section to the County Executive Committee Member who shall issue policy directive on management of water services to such persons in accordance with this Act

Septic Tank Sludge Management

47 (1) The County Executive Committee member in consultation with the County Executive Committee member in charge of public health shall, as soon as reasonably practicable following coming into effect of the Act, make regulations governing the sustainable management of septic tank sludge, including the licensing of exhauster service providers, and disposal of sludge after collection from septic tanks by exhauster service providers

(2) Regulations made under this section may require one or more county water service providers to establish and maintain facilities for the disposal of septic tank sludge and waste water from exhausters operating within the area of supply of the county water services provider

Easements, access rights etc

48 (1) The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in national law

(2) A water services provider which acquires easements, access rights and or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant title documents

(3) A water services provider shall take steps to obtain and maintain in its records "as built" drawings of its facilities and infrastructure,

reference maps and plans and other relevant documents which show the location and layout of the water infrastructure

(4) The County Executive Committee Member shall prescribe rules for protecting access rights to point water sources enjoyed by community members on traditional or other non-statutory basis

Operation of community water projects

49 (1) The County Executive Committee member shall facilitate the development and operation of community water service providers in rural areas within which the county water service providers do not provide adequate water services

(2) Where, following viability studies, it is recommended that certain community water service providers should cluster into bigger associations in order to better achieve viability, the County Executive Committee member shall put in place appropriate measures to encourage such community water service providers to cluster, consolidate and outsource to a common services provider services such as billing services, pump maintenance services and other similar services, or engage the services of a contractor to provide professional management services

(3) A community water services provider which takes steps to enhance viability through clustering, outsourcing of services and or engagement of professional management services shall be eligible to financial, technical and other support from the county government during the period before it achieves financial viability

Construction of boreholes within supply area

50 (1) Subject to national legislation every application to the water resources regulatory authority for the construction of a borehole for domestic water consumption within the area of supply of a water services provider shall be submitted for a 'no-objection' to the water services provider within whose area of supply the borehole is to be constructed

(2) In considering an application for a "no-objection" the water services provider shall take account of its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, it shall decline the request for a "no-objection"

(3) The water services provider shall maintain an inventory of boreholes constructed within its area of supply (4) Where the water services provider wishes to take water from the borehole for supply to its

customers it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole

(4) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider's customers shall be submitted to the Water tribunal for determination

Regulation of water vending kiosks

51 (1) The County Executive Committee member shall, within six months of this law coming into effect, make regulations on water vending kiosks

(2) Without prejudice to the generality of subsection (1) such regulations may make provision with respect to—

- (a) the operations and licensing of water kiosks,
- (b) sources of water and tariffs chargeable for water sold and purchased at water vending kiosks,
- (c) optimal location of kiosks, and
- (d) restriction of ownership of water vending kiosks by employees of water service providers

PART VIII—APPROVALS OF CONSTRUCTION WORKS AFFECTING INFRASTRUCTURE

Approval of construction works

52 (1) In all cases where a person is undertaking construction works which affect water and sanitation infrastructure operated by a water services provider the approval of the water services provider shall be obtained on terms and conditions set by the water services provider, which may include the payment of a fee to be prescribed in the regulations

(2) It is an offence for a person to undertake the works contemplated in this section without the approval of the water services provider and upon conviction, such person will be liable to a fine of not less than One Hundred Thousands shillings or imprisonment for a term not exceeding six months or both such fine and such imprisonment

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works the person responsible for the works shall be liable to a surcharge of the full cost of repairs or replacement and such costs shall be a debt due to the water services provider recoverable at its instance through a suit in the appropriate court

(4) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private persons

Certification of property development works connecting to water mains

53 (1) In every case where a developer of property is undertaking plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider –

- (a) the developer shall present the plans for such plumbing and sanitation works to the water services provider for inspection and approval, prior to commencement of construction, and
- (b) upon completion of the works, the water services provider shall inspect the works and if the works comply with the approved plans, certify the works as approved for connection to the mains

(2) A developer who undertakes plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider without presenting the plans for certification as required under this section shall be guilty of an offence and on conviction shall be liable to imprisonment for up to six months or a fine or not more than Fifty Thousand Shillings or to both such fine and imprisonment

PART IX— PROTECTION OF WATER RESOURCES

Storm water drainage

54 (1) The Department shall in collaboration with relevant county/ies or national government departments and local residents promote sound water and land use practices

(2) Before undertaking works for the development of property in an urban area the person shall prepare and submit for approval by the Department a storm water management plan

(2) The plan shall make provision for short term storm water retention and and augmentation of groundwater resources before discharge into storm water drainage channels of the urban authority

(3) The arrangements made by the urban authority for the disposal of storm water from rooftops and paved areas of the urban area may not increase the risk of erosion or flooding of private property

(4) The powers of the Department to approve a storm water management plan under this section shall be exercised in consultation with the Department in charge of county urban planning

Storm water management plan

55 (1) For the purposes of this section, a water catchment means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland

(2) There shall be for each town or urban area, a watershed storm water management plan in accordance with the prescribed standards

(3) The town administrator or an officer responsible for managing an urban area shall ensure that the storm water management plan is developed and implemented through a consultative process

(4) The storm water management plan shall among others—

- (a) identify, survey and inventory existing conditions that affect storm water runoff,
- (b) address issues of peak flows, flooding, ground water recharge, stream erosion and water quality

(5) A person or entity engaged in land development activity, construction of a building or any physical infrastructure that is exposed to water precipitation or an owner of such constructed infrastructure shall develop and implement a storm water management plan on a sub-catchment basis in accordance with the prescribed standards

(6) Any person constructing a road shall ensure that there is a built in storm water management plan and system for that road

(7) Any construction of a building, physical infrastructure or a road shall not be approved unless the construction has a storm water management plan to be implemented

(8) A person who contravenes this section commits an offence and shall—

- (a) if a corporate body be liable to a fine of five hundred thousand shillings, or
- (b) if an individual to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months

Reduction of runoff water

56 (1) The owner of a house, property or building shall—

- (a) install rain barrels with sufficient capacity to store water from the building,
- (b) where applicable not permit storm water to become runoff,

- (c) reuse or recycle storm water collected for other purposes in the premises

Riparian buffers

57 (1) For the purposes of this section, a riparian buffer is an area around or situated next to bodies of water that act as buffers or cushions to that water body

(2) The Department in collaboration with other government agencies and local residents shall mobilize residents, develop or restore riparian buffers along rivers, waterways or any water body

(3) No person will interfere with a restored riparian buffer in a way that exposes it to run off water

(4) A person who contravenes subsection (3) commits an offence and shall—

- (a) if a corporate body be liable to a fine not exceeding shillings five hundred thousand shillings, and
- (b) if an individual be liable to a fine not less than fifty thousand or to imprisonment for a term not exceeding two months

Rainwater catchment

58 (1) The County Executive Committee member in consultation with the County Executive Committee member in charge of county planning shall make rules requiring householders to install rainwater catchment systems with a storage capacity capable of meeting 7 days demand of the household for domestic water supply

(2) The Department shall advise householders on the household treatment and other handling requirements for rainwater which is to be consumed

Catchment conservation

59 (1) The County Executive Committee member, in consultation with the county executive committee member in charge of environment, shall formulate a strategy for the conservation by the county government of catchments and other sources of water from which a water service provider takes water for supply

(2) The strategy shall provide for measures and institutional arrangements of the county government for the conservation of catchments and water sources

(3) The strategy shall provide methods of recycling water for livestock consumption, farming purposes and other connected purposes

(4) The strategy shall provide collaborative arrangements between the county government and water resources users associations in the formulation and implementation of catchment sub-catchment management plans

(5) The County Executive Committee member may, following consultations with the County Executive Committee member in charge of the County Treasury, impose a levy on water consumption to be used to finance part of the cost of implementation of catchment management plans by water resources users associations

(6) The Department shall in consultation with National Land Commission, other agencies and the public declare by notice in the Gazette any area to be a water conservation area for the purpose of conserving water

(7) The Department may impose through a notice such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area

(8) The Department shall—

- (a) through intergovernmental relations Act, County Governments Act and any other written laws collaborate with other county governments in conservation and protection of water sources and catchments of strategic importance which are located outside the county,
- (b) support financing of water conservation and catchment protection,
- (c) support and enforce reserve flow maintenance at all times,
- (d) in collaboration with other agencies develop policy and strategy and on water storage at household and farm level and ensure their implementation, and
- (e) in collaboration with Water Resource Users Associations will participate in development and monitor implementation of sub catchment management plans

Sector wide forum

60 (1) The Department shall constitute and convene the water and sanitation services sector wide forum

(2) The sector wide forum shall consist of all stakeholders in the water and sanitation sector as shall be prescribed

(3) The roles of the sector wide forum shall be—

- (a) review and deliberate on water resources management and sanitation services,
- (b) propose policy or legislative interventions for effective implementation of this Act,
- (c) participate in development of measures, plans and strategies for implementing this Act
- (4) The sector wide forum shall meet at least once every three months

PART X— SANITATION SERVICES AND POLLUTION CONTROL

Master plan

61 The Department shall in collaboration with other county and national government departments and local residents prepare a five years sanitation services master plan

Provision of sanitation services

62 The County Water Services Provider shall either directly or through public private partnership—

- (a) provide necessary sanitation facilities and services,
- (b) construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements

Waste water management

63 The Department shall—

- (a) develop strategies and policies to encourage treated waste water and dried sludge re-use,
- (b) in cooperation with relevant government agencies will periodically carry out effluent quality analysis to confirm efficacy of the facilities

Compliance with effluent standards

64 (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by Kenya Bureau of Standards

(2) A person who contravenes subsection (2) commits an offence and shall—

- (a) if a corporate body be liable to a fine not exceeding shillings' five hundred thousand shillings, and

- (b) if an individual be liable to a fine of fifty thousand or to imprisonment for a term not exceeding two months

Discharge of contaminated water or effluent

65 (1) A person shall not discharge or dispose any contaminated water or effluent unless in accordance with the prescribed guidelines and standards

(4) A person who contravenes subsection (2) commits an offence and shall—

- (a) if a corporate body be liable to a fine not exceeding shillings five hundred thousand shillings, and

- (b) if an individual be liable to a fine of fifty thousand or to imprisonment for a term not exceeding two months

Interference with sewerage system

66 (1) A person shall not interfere with any sewerage facility or system unless with a written consent of the County Water Services Provider for the purposes of carrying out works within the area of the facility or system

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding shillings five hundred thousand or to imprisonment for a term not exceeding three years

Sewerage tariffs

67 (1) Subject to the County Governments Act and any written law, the County Water Services Provider may impose tariffs or levy sewerage services levy on water or sanitation services for the purposes of disposal of water or sewage

(2) The tariffs imposed or levied under this section shall be subject to approval by the county executive committee

PART XI— FINANCIAL PROVISIONS

Trust fund

68 (1) There is established a Fund to be known as County Water Sector Fund

(2) The Fund shall consist of—

- (a) such monies as may be appropriated by county assembly,
(b) monies received as grants, donations or grants or bequests

(3) The Fund shall be used for carrying out the functions of the Department

Administration of the Fund

69 The Fund shall be administered by the Department in accordance with the prescribed guidelines

PART XII— ENFORCEMENT

Authorized officers

70 (1) The County Executive Committee Member may on recommendation of the County Water Services Provider or the Department appoint such number of authorized officers for the purposes of enforcing or implementing the respective functions of the County Water Services Provider or department

(2) The County Executive Committee Member shall issue a certificate of appointment to every officer appointed under this section

Power of entry

71 For the purposes of ensuring compliance or implementation of the Act, an authorized officer may, at any reasonable time, enter any place in which any function related to this Act is carried out

Power of officers

72 (1) An authorized officer may examine or inspect any facility, equipment, information or data related to this Act or gain access to any area for the purposes of implementing this Act

(2) Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and is liable to a fine not exceeding one hundred thousand shillings

PART XIII— MISCELLANEOUS

Water conflict resolution

73 The institutions established under this Act shall actively participate in community water conflict resolution

Regulations

74 The county executive committee member may, on recommendation of the department, make Regulations generally for the better carrying out of the objects of this Act

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe guidelines for developing watershed storm management plans,
- (b) prescribe guidelines for sanitation system and standards,
- (c) prescribe guidelines for the areas declared as water protected areas,
- (d) prescribe guidelines for administering the Fund, and
- (e) prescribe the list of water sector stakeholders

FIRST SCHEDULE**CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OF
COUNTY WATER SERVICES PROVIDER****Tenure of office**

1 Any member of the Board, other than Chief Officers shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years

Vacation of office

2 A member of the Board may—

- (a) at any time resign from office by notice in writing to the County Executive Committee Member,
- (b) be removed from office by the County Executive Committee Member if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson,
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings,
 - (iii) is convicted of an offence involving dishonesty or fraud,
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors,
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Authority, or
 - (vi) fails to comply with the provisions of this Act relating to disclosure

Meetings

3 (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least seven members, shall convene a special meeting of the Board at any time for the transaction of the business of the Board

(3) The Chairman or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time

(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 the business of the Board shall be five members including the Chairperson or the person presiding

(6) The Chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, 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 votes of the members present and voting and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote

(8) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof

Conflict of interest

4 (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

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 member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter

(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists in writing

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days

(7) The Board shall report to the Cabinet Secretary any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report

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

(10) 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

Code of conduct

5 (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and staff of the Board in the performance of their duties

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comments

(3) The Board shall include in its annual report a report on compliance with the code during the period covered by the annual report

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff

Execution of Interest

6 Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require being under seal, may be entered into or executed on behalf of the Board by any person generally

Minutes

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