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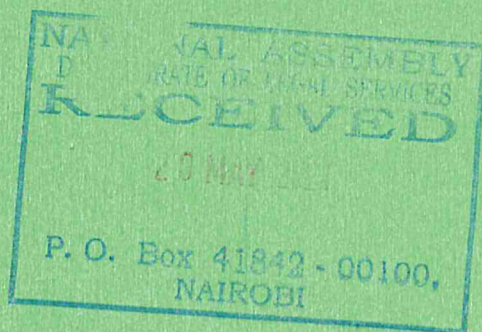
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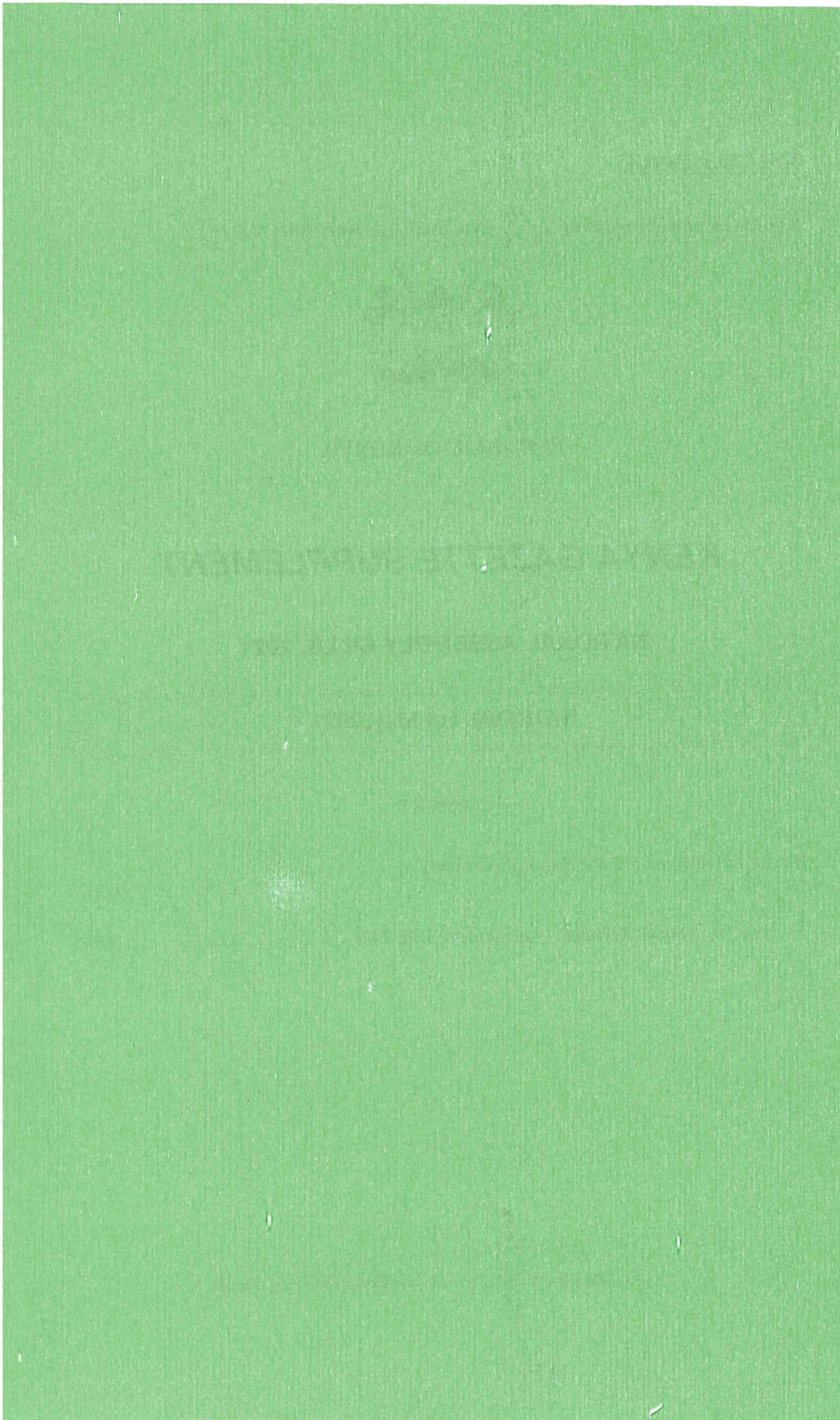
Bill for Introduction into the National Assembly—

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The Tax Appeals Tribunal (Amendment) Bill, 2021 609



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**THE TAX APPEALS TRIBUNAL
(AMENDMENT) BILL, 2021**

A Bill for

**AN ACT of Parliament to amend the Tax Appeals
Tribunal Act, 2013 and for connected purposes**

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Tax Appeals Tribunal (Amendment) Act, 2021.

Short title.

2. The Tax Appeals Tribunal Act (hereinafter referred as the “principal Act”) is amended by repealing section 4 and substituting therefor the following—

Repeal of
section 4 of Act
No. 40 of 2013.

Membership of the
Tribunal.

4. The Tribunal shall consist of the following members, appointed by the Judicial Service Commission—

(a) a Chairperson; and

(b) not less than fifteen but not more than twenty other members, of whom not less than five and not more than nine shall be Advocates of the High Court of Kenya.

Insertion of Sections 4A,
4B and 4C .

Qualifications for
appointment.

4A. A person shall not be appointed a Chairperson or a member of the Tribunal under section 4 unless that person—

(a) in case of the Chairperson, is qualified to be appointed as a Judge of the High Court; and

(b) in case of a member—

- (i) is of high moral character and integrity in accordance with Chapter six of the Constitution;
- (ii) has a degree in law, business, finance, public finance, economics, insurance or related discipline from a university recognized in Kenya or any other relevant qualification from an institution recognized in Kenya;
- (iii) has at least ten years' experience in matters relating to the discipline referred to under subparagraph (ii);
- (iv) is not a public officer or a tax agent;
- (v) has not at any time within the preceding five years been an employee of the Kenya Revenue Authority;
- (vi) has met his tax obligations;

(vii) has not been convicted of an offence under any law; and

(viii) has not been adjudged bankrupt by a court of competent jurisdiction.

Appointment
procedures.

4B. (1) Within fourteen days of the occurrence of a vacancy in the office of a Chairperson or member of the Tribunal, the Judicial Service Commission shall declare the vacancy in the office of the Chairperson or a member of the Tribunal.

(2) Upon declaration of a vacancy under subsection (1), the Judicial Service Commission shall invite applications from qualified persons for the vacancy in at least two daily newspapers of national circulation.

Selection Panel.

4C. (1) The Judicial Service Commission shall appoint a selection panel for the purpose of selecting suitable candidates for appointment as Chairperson or a member of the Tribunal, as the case may be.

(2) The selection panel shall at its first meeting appoint a chairperson, a vice-chairperson and determine its own procedures.

(3) An application in respect of a vacancy declared under section 4B shall be submitted to the panel appointed under subsection (1).

(4) The Judicial Service Commission shall provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(5) The selection panel shall consider the applications, shortlist and publish in at least two daily newspapers of national circulation, the names and qualifications of all the applicants and those shortlisted seven days from the date of expiry of the time for submission of applications under section 4B.

(6) The selection panel shall interview the applicants fourteen days from the date of publication of the list of the short-listed applicants.

(7) After conducting the interviews, the selection panel shall select three persons qualified to be appointed as Chairperson or a member of the Tribunal, for each vacant position, and submit the names to the Judicial Service Commission.

(8) The Judicial Service Commission shall within seven days of receiving the names, by notice in the Gazette, appoint the Chairperson or a member of the Tribunal, as the case may be.

(9) Where the Judicial Service Commission rejects the list of names submitted under subsection (8), it shall submit a notice of rejection within seven days of receipt of the names to the selection panel giving reasons for rejection.

(10) Upon the receipt of the notice of rejection under subsection (9), the selection panel shall submit fresh nominations and the procedure set out in this section shall, with the necessary modifications, apply.

(11) Notwithstanding any provision in this section, the Judicial Service Commission, may by resolution, extend the period specified in respect of any matter under this section, by a period not exceeding fourteen days.

(12) In shortlisting, selecting or appointing the Chairperson or a member of the Tribunal, the selection panel and the Judicial Service

Commission—

- (a) shall ensure that the nominees to the Tribunal reflect the interests of all sections of the society;
- (b) shall ensure equal opportunities for persons with disabilities and other marginalized communities; and
- (c) shall ensure that no more than two-thirds of the members shall be of the same gender.

3. Section 5 of the principal Act is amended—

Amendment
of section 5
of No. 40 of
2013.

- (a) by inserting a new subsection immediately after subsection (1) as follows—

“(1A) The Chairperson or a member of the Tribunal shall serve on a fulltime basis”.
- (b) in subsection (2)(a), by deleting the words “Cabinet Secretary” and substituting therefor the words “Judicial Service Commission”;
- (c) in subsection (3), by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the words “appointing authority”;
- (d) in subsection (4), by deleting the words “Cabinet Secretary” and substituting therefor the words “appointing authority”;
- (e) in subsection (6)—
 - (i) by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (4)” ; and

- (ii) by deleting the words “Cabinet Secretary” and substituting therefor the words “appointing authority”.

4. The principal Act is amended by repealing section 7 and substituting therefor the following—

Repeal of
section 7 of
No. 40 of
2013.

Staff of the
Tribunal.

7. (1) There shall be a Secretary to the Tribunal who shall be competitively appointed by the Public Service Commission.

(2) A person shall not be qualified for appointment under subsection (1) unless that person—

- (a) has a degree in law, business, finance, economics, insurance or related field from a university recognized in Kenya or any other relevant institution recognized in Kenya;
- (b) has a minimum of ten years’ experience in matters relating to the discipline referred to in paragraph (a);
- (c) has completed five years since he left the Authority, if the person is former employee of the Kenya Revenue Authority;
- (d) is not a tax agent;
- (e) has held a senior management position for more than ten years;

- (f) has not been convicted of a felony;
- (g) has not been adjudged bankrupt by a court of competent jurisdiction;
- (h) has met his tax obligations; and
- (i) meets the requirements of Chapter Six of the Constitution.

(2) The Tribunal shall have such other staff, recruited competitively, by the Public Service Commission, as may be necessary for the proper discharge of the functions of the Tribunal under the Act.

5. The principal Act is amended by inserting the following new section immediately after section 7—

Insertion
of new
sections
7A.

Functions of the
Secretary.

7A. The functions of the Secretary of the Tribunal shall include—

- (a) the day-to-day management of the affairs of the Tribunal;
- (b) keeping proper records of tax appeals filed, judgment delivered and the tax appeals settled out of the Tribunal;
- (c) under the guidance of the Chairperson, providing policy and strategic leadership of the Tribunal and the Secretariat;
- (d) mobilizing and

managing the resources of the Tribunal;

(e) coordinating the preparation and approval of annual budget estimates by the Tribunal through a resolution by not less than half of the members;

(f) submitting the approved budget estimates to the National Treasury in accordance with the provisions of the Public Finance Management Act, 2012;

No. 18 of 2012.

(g) overseeing the financial management and administrative functions of the Tribunal in accordance with the Public Finance Management Act, 2012;

(h) keeping proper books of account of the financial affairs of the Tribunal; and

(i) any other functions that may be assigned by the Chairperson from time to time.

6. The principal Act is amended by repealing section 8 and substituting therefor the following—

Repeal of section 8 of No. 40 of 2013.

Remuneration and payment of expenses.

8. (1) The Chairperson or a member of the Tribunal shall be paid such remuneration as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration

Commission, from time to time.

(2) The expenses of the Tribunal shall be paid out of the funds of the Tribunal.

(3) The staff of the Tribunal shall be paid such remuneration as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission from time to time.

7. The principal Act is amended by inserting the following new sections immediately after section 8—

Insertion of sections 8A and 8B.

Funds of the Tribunal.

8A. (1) The funds of the Tribunal shall consist of—

- (a) funds appropriated by Parliament;
- (b) grants, donations or bequeaths received by the Tribunal;
- (c) fees charged under section 12;
- (d) fines or any other charges imposed by the Tribunal to any party to a tax dispute or party's agent, in the performance of its duties under this Act; and
- (e) any other monies as may, with the approval of the Cabinet Secretary, be received by or made available to the Tribunal, for the purpose of performing its functions.

(2) The funds of the Tribunal shall be used for the purpose for which the Tribunal is established.

(3) Any unutilized funds at the end of a financial year shall be retained by the Tribunal as reserve funds, and subject to the budget of the Tribunal, be used in the following financial year.

Accounts and
Audit.

8B. The books of account of the Tribunal shall be audited by the Auditor General in accordance with the Public Audit Act, 2015.

No.34 of 2015.

8. Section 11 of the principal Act is amended in subsection (2) by inserting the word “not” immediately after the word “shall”.

Amendment
of section 11
of No. 40 of
2013.

9. Section 13 of the principal Act is amended—

Amendment
of section 13
of No. 40 of
2013.

- (a) in subsection (1)(a), by inserting the words “or through electronic means” at the end of the sentence;
- (b) in subsection (3), by inserting the words “or through electronic means” immediately after the words “in writing”; and
- (c) in subsection (7), by inserting the following proviso at the end of the sentence—

“Provided that in case the Tribunal is not able to conclude hearing an appeal within ninety days, the Tribunal may through a resolution made by not less than half of its Members, extend the time for hearing and determination of the appeal by not more than thirty days.”

10. Section 16 of the principal Act is amended in subsection (1) by inserting the words “or through electronic means” immediately after the words “in writing”.

Amendment to
section 16 of
the Act No.40
of 2013

11. Section 25 of the principal Act is amended in subsection (1) by inserting the words “of the High Court of Kenya” at the end of the sentence.

Amendment to
section 25 of
the Act No.40
of 2013.

12. Section 27 of the principal Act is amended in subsection (1) by inserting the words “or through electronic

Amendment to
section 27 of
the Act No.40

means” immediately after the words “in writing”.

of 2013.

13. Section 29 of the principal Act is amended—

Amendment to
section 29 of
the Act No.40
of 2013.

- (a) in subsection (3), by inserting the words “or through electronic means” immediately after the words “in writing”; and
- (b) in subsection (4), by inserting the words “or through electronic means” immediately after the words “in writing”.

14. The principal Act is amended by inserting the following new section immediately after section 29—

Insertion of
new section
29A.

Review of
decree or orders.

29A. (1) A person who is aggrieved by a decree or an order from which no appeal has been preferred from the Tribunal to the High Court, may apply for review of the decree or the order within seven days from the date the decree or order was made by the Tribunal:

Provided that such person has not appealed to the High Court in respect of the decree or the order which is applying for review.

(2) Applications for review of decree or orders under subsection (1) may be made—

- (a) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by the applicant at the time when the decree was passed or the order was made;

(b) on account of some mistake or error apparent on the face of the record; or

(c) for any other sufficient reason.

(3) Upon receipt of an application for review under subsection (1), the Tribunal may, set aside, vary or affirm the decree or the order, stating reasons for review as it deems fit.

15. Section 32 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment to section 32 of Act No.40 of 2013.

“(1A) A party that has appealed against the decision of the Tribunal in subsection (1) shall within two days of lodging a notice of appeal, serve a copy of the notice on the other party.”

16. The principal Act is amended in section 35 deleting the opening sentence and substituting therefor the following—

Amendment to section 35 of Act No.40 of 2013.

“An action, suit, prosecution or any other proceeding, shall not be brought or instituted against a person who is or was a Chairperson, a member of the Tribunal or an officer of the Tribunal in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act, unless, having regard to the circumstances of the case, such act or omission is found to be—”

17. Section 36 of the principal Act is amended—

Amendment to section 36 of Act No.40 of 2013

(a) in subsection (1), paragraph (c), by deleting the word “Commissioner” and substituting therefor the word “Chairperson”; and

(b) in subsection (2), by deleting the word “Commissioner” and substituting therefor the word “Chairperson.”

18. Section 44 of the principal Act is amended by

Amendment to

inserting the following new subsections immediately after subsection (3) —

section 44 of
Act No.40 of
2013.

- (4) The Chairperson and the other members of the Tribunal appointed before the commencement of this Act shall continue to hold office for the unexpired duration of their term as if they have been appointed under section 4.
- (5) The Secretary and the other staff serving the Tribunal before commencement of this Act shall continue to hold office until the Public Service Commission appoints the staff of the Tribunal.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of the Bill is to amend the Tax Appeals Tribunal Act, 2013 to address the challenges affecting the performance of the Tax Appeals Tribunal to facilitate the expedition of tax disputes in the country.

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill seeks to repeal section 4 of Act and substitute therefor a new section 4 to provide for the composition of members of the Tribunal, appointed by the Judicial Service Commission. The Clause further seeks to amend the Act by introducing new sections 4A and 4B providing for the qualifications of the members of the Tribunal and appointment procedures respectively.

Clause 3 of the Bill seeks to amend section 5 of the Act to provide that service by the Chairperson and members of the Tribunal shall be on fulltime basis.

Clause 4 of the Bill contains the proposal to amend the Act by repealing the current section 7 and replacing it with a new section 7. The new section 7 provides for the staff of the Tribunal, including the Secretary to the Tribunal appointed by the Public Service Commission.

Clause 5 of the Bill seeks to amend the Act by introducing section 7A. The new section provides for the functions of the Secretary to the Tribunal, that include:

- (a) the day-to-day management of the affairs of the Tribunal;
- (b) keeping proper records of tax appeals filed, judgment delivered and the tax appeals settled out of the Tribunal;
- (c) under the guidance of the Chairperson, providing policy and strategic leadership of the Tribunal and the Secretariat, etc.

Clause 7 of the Bill seeks to amend the Act by repealing section 8 and replacing therefor with a new section 8 providing for the remuneration and payment of expenses to the members of the Tribunal.

Clause 8 of the Bill proposes to amend the Act by inserting new sections immediately after section 8 to provide for the source of Funds of the Tribunal and auditing the books of account of the Tribunal respectively.

Clauses 9, 10, 12 and 13 of the Bill seeks to amend sections 13, 16, 27 and 29 to provide for electronic means as an alternative way of communication under the Act.

Clause 14 of the Bill proposes to amend the Act by inserting a new section immediately after section 29 to allow for a person who is

aggrieved by a decree or an order from which no appeal has been preferred by Tribunal to apply for review of the said decree or the order within seven days from the date the decree or order was made to the Tribunal provided that such person has not appealed to the High Court in respect of the decree or the order which is applying for review.

Clause 15 of the Bill seeks to amend section 32 of the Act to require a party that has appealed against the decision of the Tribunal under the section to, within two days of lodging a notice of appeal, serve a copy of the notice on the other party.

Clause 18 of the Bill seeks to amend section 44 of the Act by saving the unexpired term of the current members of the Tribunal and staff for continuity.

Dated the 5th May, 2021.

AMOS KIMUNYA,
Leader of the Majority Party.

Section 4 of No.40 of 2013, which it is proposed to repeal—

Membership of the Tribunal

(1) The Tribunal shall consist of a Chairperson and not less than fifteen but not more than twenty other members, who shall, subject to this Act, be appointed by the Cabinet Secretary upon such terms and conditions of service as the Cabinet Secretary may determine.

(2) Not more than five members of the Tribunal appointed under subsection (1) shall be advocates of the High Court of Kenya.

(3) A person shall not be appointed a Chairperson or a member of the Tribunal under this section unless that person—

- (a) in case of the Chairperson, is qualified to be appointed as a Judge of the High Court; and
- (b) in case of a member—
 - (i) is of high moral character and integrity in accordance with Chapter six of the Constitution;
 - (ii) hold a degree in law, business, finance, public finance, economics, insurance or related discipline from a university recognised in Kenya or any other relevant qualification from an institution recognised in Kenya;
 - (iii) has at least ten years' experience in matters relating to the discipline referred to in paragraph (b);
 - (iv) is not a public officer or an employee of Kenya Revenue Authority or a tax agent;
 - (v) has met his tax obligations;
 - (vi) has not been convicted of an offence under any law; and
 - (vii) has not been adjudged bankrupt by a court of competent jurisdiction.

Section 5 of No.40 of 2013, which it is proposed to amend—

(2) A person appointed under this Act shall cease to hold office if that person—

- (a) resigns from office by notice in writing addressed to the Cabinet Secretary;

(3) If the Cabinet Secretary is of the opinion that a member of the Tribunal should be removed in accordance with subsection 2(f) and (g), the Cabinet Secretary shall appoint a committee consisting of three

persons of reputable character, one of whom shall be an advocate of the High Court, to inquire into the matter or conduct of the member in question and recommend to the Cabinet Secretary.

(4) Where a question of the removal of a member of the Tribunal is referred to a committee under this section, the Cabinet Secretary shall, subject to subsection (6), suspend the member from the Tribunal.

(6) A suspension under subsection (3) shall cease to have effect if the committee advises the Cabinet Secretary that the member suspended should not be removed from office.

Section 7 of No. 40 of 2013, which it is proposed to repeal—

Secretary to the Tribunal

(1) The Cabinet Secretary shall provide such staff, including the Secretary, as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

(2) The Secretary referred to under subsection (1) shall—

- (a) be knowledgeable in procedures of a tribunal; and
- (b) have a minimum of five years' experience in finance, economics or legal practice.

Section 8 of No.40 of 2013, which it is proposed to repeal—

Expenses and payment of allowances

(1) The members of the Tribunal shall be paid such allowances for expenses as the Cabinet Secretary may determine.

(2) The expenses of the Tribunal, including the allowances for expenses of the members of the Tribunal, shall be made out of funds provided by Parliament through the National Treasury.

Section 11(2) of No.40 of 2013, which it is proposed to amend—

Clerk of the panel

(2) A person shall be qualified to be appointed as a clerk unless that person is qualified to serve as a court clerk.

Section 13(1), (3) and (7) of No.40 of 2013, which it is proposed to amend—

Procedure for appeal

(1) A notice of appeal to the Tribunal shall—

- (a) be in writing;

(3) The Tribunal may, upon application in writing, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).

(7) The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

Section 16 of No.40 of 2013, which it is proposed to amend—

Hearing

(1) The Secretary to the Tribunal shall advise all parties in writing of the time and place of the hearing at least fourteen days before the commencement of hearing.

Section 25(1) of No.40 of 2013, which it is proposed to amend—

Representation before the Tribunal

(1) For the hearing of proceedings before the Tribunal, the appellant may appear in person or be represented by a tax agent or by an advocate.

Section 27(1) of No.40 of 2013, which it is proposed to amend—

Discontinuance, dismissal or reinstatement of an appeal

(1) An appellant may, by notice in writing, withdraw the appeal.

Section 29(3) and (4) of No.40 of 2013, which it is proposed to amend—

(3) The Tribunal shall make a decision in writing—

(a) affirming the decision under review;

(b) varying the decision under review; or

(c) setting aside the decision under review and either—

(i) making a decision in substitution for the decision so set aside;
or

(ii) referring the matter to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.

(4) The Tribunal shall give reasons in writing for its decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

Section 35 of No.40 of 2013, which it is proposed to amend—

Protection of officers

Omitted to be done in the performance of his functions under this Act unless, having regard to the circumstances of the case, such act or omission is found to be—

- (a) done or omitted to be done wilfully or dishonestly by such officer;
- (b) attributable to the negligence of such officer; or
- (c) done or omitted to be done by such officer in contravention of any provision of this Act or the Regulations.

Section 36(1) and (2) of No.40 of 2013, which it is proposed to amend—

(1) Any person employed in the performance of any function under this Act who, by virtue of the performance of that function, becomes possessed of any information and who directly or indirectly communicates that information to any person otherwise than—

- (a) in the normal performance of his functions under this Act; or
- (b) in the course of any proceedings in a court or the Tribunal; or
- (c) with the express permission of the Commissioner,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

(2) Notwithstanding any other provision of this Act, the Commissioner may disclose information to a person in the services of the Government in a revenue or statistical department where the information is needed for the purposes of the official duties of that person solely for revenue or statistical purposes.