

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2021**

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**NAIROBI, 30th August, 2021**

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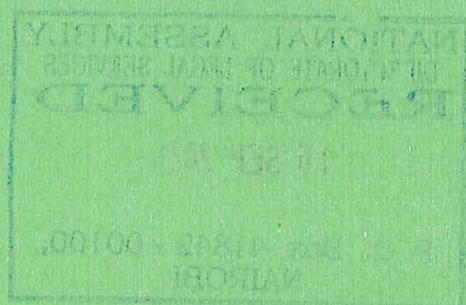
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**THE PROCEEDS OF CRIME AND ANTI-MONEY  
LAUNDERING (AMENDMENT) BILL, 2021**

**A Bill for**

**AN ACT of Parliament to amend the Proceeds of Crime  
and Anti-Money Laundering Act**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2021.

Short title.

2. Section 2 of the Proceeds of Crime and Anti-Money Laundering Act, in this Act referred to as the “principal Act”, is amended—

Amendment  
of section 2  
of No. 9 of  
2009.

(a) by deleting the definition of “Deputy Director”;  
and

(b) in the definition of “designated non-financial businesses or professions” by inserting the following new paragraph immediately after paragraph (fa)—

(fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms.

(c) in the definition of “financial institution”, by adding the following proviso at the end of paragraph (l)—

“Provided that this applies both to insurance undertakings and to insurance intermediaries including agents and brokers;”.

(d) by inserting the following new definition in proper alphabetical sequence—

“Oversight Board” means the Asset Recovery Oversight Board established under section 55A.



3. Section 25 of the principal Act is amended in—

Amendment  
of section  
25 of No. 9  
of 2009.

- (a) subsection (1), by deleting the words “and a Deputy Director” appearing immediately after the word “Director-General”;
- (b) subsection (2), by deleting the words “and the Deputy Director” appearing immediately after the word “Director-General”;
- (c) subsection (4), by deleting the words “or Deputy Director” appearing immediately after the word “Director-General”; and
- (d) subsection (5), by deleting the words “and the Deputy Director” appearing immediately after the word “Director-General”.

4. Section 26 of the principal Act is amended in subsection (1) by deleting the words “or the Deputy Director” appearing immediately after the word “Director-General”.

Amendment  
of section  
26 of No. 9  
of 2009.

5. Section 27 of the principal Act is amended in—

Amendment  
of section  
27 of No. 9  
of 2009.

- (a) subsection (1) by deleting the words “or Deputy Director”; appearing immediately after the word “Director-General” and
- (b) in subsection (2) by deleting the words “or Deputy Director” appearing immediately after the word “Director-General”.

6. The principal Act is amended by repealing section 30.

Repeal of  
section 30  
of No. 9 of  
2019.

7. Section 32 of the principal Act is amended in subsection (1) by deleting the words “the Deputy Director” appearing immediately after the word “Director-General”.

Amendment  
of section  
32 of No. 9  
of 2019.

8. The principal Act is amended by inserting the following new section immediately after section 44—

Insertion of  
a new  
section in  
No. 9 of  
2009.

Intervention by  
Centre

44A. (1) Where the Centre,  
after consulting a reporting  
institution or a person required to



make a report in terms of section 44, has reasonable grounds to suspect that a transaction or a proposed transaction may—

(a) constitute money laundering and related activities; or

(b) involve—

(i) the proceeds of crime or proceeds of unlawful activities or property which is connected to the proceeds of crime or unlawful activities and related activities; or

(ii) the proceeds of, or property which is connected to an offence relating to the financing of terrorism and related activities; or

(iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified or designated pursuant to the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 and related activities,

the Center may, for purposes of achieving the objectives of the Act, direct the reporting



institution or person, in writing, not to proceed with the transaction or proposed transaction or any other transaction in respect of the funds or property affected by that transaction or proposed transaction for a period not exceeding five working days as may be determined by the Centre, in order to allow the Centre to make the necessary inquiries concerning the transaction and, where the Centre considers it appropriate, to inform and advise an investigating authority, regulatory authority or tax agency.

(2) For the purposes of calculating the period of five working days in subsection (1), Saturdays, Sundays and proclaimed public holidays shall not be taken into account.

**9. Section 48 of the principal Act is amended—**

Amendment of section 48 of No. 9 of 2009.

- (a) by deleting the word “reporting” appearing immediately after the word “The” in the opening sentence; and
- (b) in paragraph (a) by inserting the words “advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms” immediately after the word “accountants”.

**10. Section 53 of the principal Act is amended—**

Amendment of section 53 of No. 9 of 2009.

- (a) in subsection (2), by inserting the words “upon the recommendation by the Oversight Board” immediately after the words “the Attorney-General shall”;



- (b) by inserting the following new subsection immediately after subsection (2) —

“(2A) The Agency Director shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.”

- (c) by deleting subsection (3) and substituting therefor the following new subsection—

(3) For a person to be appointed as the Agency Director, that person shall—

- (a) hold a degree in law from a recognized university;
- (b) have at least fifteen years work experience, of which at least five shall be in senior management;
- (c) meet such other requirements that may be specified by the Oversight Board.

11. Section 53A of the principal Act is amended—

Amendment of section  
53A No. 9 of 2009.

- (a) in subsection (1), by inserting the words “and the Oversight Board” immediately after the words “the Salaries Remuneration Commission”.
- (b) by inserting the following new subsection immediately after subsection (6)—

“(6A) For purposes of carrying out their functions under this Act, the Agency’s Counsel shall have the same privileges as State Counsel under the Office of the Attorney General or the ministry or department for the time being dealing with matters related to justice, in addition to any other powers they may have under this Act”.

- (c) in subsection (7), by deleting the word “Attorney-General” appearing immediately after the words “approval of the” and substituting therefor the words “Oversight Board”.



**12.** Section 54A of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 54A of No. 9 of 2009.

“(1) The National Assembly shall allocate adequate funds to the Agency to enable the Agency perform its functions under this Act and any other written law and the budget shall be a separate vote.”

**13.** Section 54C of the principal Act is amended in subsection (5) by deleting the word “Agency” appearing immediately after the word “The” and substituting therefor the words “Oversight Board”.

Amendment of section 54C of No. 9 of 2009.

**14.** The principal Act is amended by inserting the following new section immediately after section 55—

Insertion of new sections 55A, 55B, 55C, 55D, 55E, 55F and 55G in No. 9 of 2009.

Asset Recovery  
Oversight Board.

**55A.** There is established an oversight board to be known as the Asset Recovery Oversight Board which shall consist of—

- (a) the Attorney-General, who shall be the chairperson;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Director of Public Prosecutions;
- (d) the Director-General of the National Intelligence Service;
- (e) the Director-General of the Centre;
- (f) the Director of Criminal Investigations; and
- (g) the Agency Director.

Functions of the  
Oversight  
Board.

**55B.** (1) The Oversight Board shall be responsible for—



- (a) advising and overseeing the Agency on the exercise of its powers and performance of its functions;
- (b) advising and overseeing the Agency on asset recovery policies and strategic priorities of the Agency;
- (c) advising and overseeing the Agency with respect to the administration of the Agency;
- (d) approving the annual budget of the Agency;
- (e) approving the annual reports and financial statements of the Agency; and
- (f) the expenditure of the Agency.

(2) The Oversight Board may establish such committees as may be necessary for the better carrying out of its functions under this Act.

Oversight Board  
may co-opt  
members.

**55C.** (1) The Oversight Board may co-opt into any of its committees such other persons whose knowledge and skills are necessary for the better performance of its functions under this Act.

(2) A person who has been co-opted into a committee of the Oversight Board may attend the meetings of the Oversight Board and participate in the deliberations thereof but shall not have a right to vote at the meetings.

Secretary to the  
Oversight  
Board.

**55D.** There shall be a Secretary to the Oversight Board appointed by the Public Service Commission who shall be responsible for—

- (a) assisting the Oversight Board in the performance of its functions;



- (b) taking minutes at the meetings of the Oversight Board and transmitting copies thereof to the members of the Oversight Board;
- (c) keeping and maintaining the records and other documents of the Oversight Board;
- (d) communicating the decisions of the Oversight Board; and
- (e) performing any other functions that may be assigned by the Oversight Board for the achievement of the purpose for which the Oversight Board has been established.

Allowances of the members of the Oversight Board.

**55E.** The members of the Oversight Board shall be paid such allowances as the Minister may determine on the advice of the Salaries and Remuneration Commission.

Agency to facilitate the Oversight Board.

**55F.** The Agency shall provide the Oversight Board and any of its committees with such facilities and resources as may be required for the effective discharge of the functions of the Board or any of its committees.

Cabinet Secretary to make Regulations.

**55G.** (1) The Cabinet Secretary shall, in Regulations, prescribe the manner of discharging the functions of the Oversight Board including the procedure at its meetings.

(2) Notwithstanding the generality of subsection (1), the Oversight Board shall regulate its own procedure.

Insertion of new sections 130A and 130B in No. 9 of 2009.

**15.** The principal Act is amended by inserting the following new sections immediately after section 130—



Rights and  
fundamental  
freedoms.

**130A.** All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

Limitation  
of right to  
privacy.

**130B** (1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

- (a) the person's home or property may be searched;
- (b) the person's possessions may be seized;
- (c) information relating to that person's financial, family or private affairs where required may be revealed; or
- (d) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.



Amendment of  
First Schedule  
to No. 9 of  
2009.

**16.** The First Schedule to the principal Act is amended in paragraph 1 by adding the following new subparagraphs immediately after subparagraph (h)—

- (i) Law Society of Kenya.
- (j) Sacco Societies Regulatory Authority.



## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of Objects and Reasons for the Bill**

The Bill seeks to remove the position of a Deputy Director at the Financial Reporting Centre. This proposal is consistent with the current practice of not providing for positions of Deputy Chief Executives of State Corporations in law.

The Bill further proposes to designate advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms as reporting persons for purposes of the Proceeds of Crime and Anti-Money Laundering Act, 2009. The obligations under Part IV of the Act shall apply to the advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms when preparing or carrying out transactions for their clients in the following situations—

- (a) buying and selling of real estate;
- (b) managing of client money, securities or other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation, operation or management of companies;
- (e) creation, operation or management of buying and selling of business entities.

The Bill seeks to introduce a new section 44A requiring the Financial Reporting Centre to intervene where the Centre has reasonable grounds to suspect that a transaction may be suspicious. This will ensure timely access to information on assets held by criminals as preventive and repressive measure and, ultimately, disrupting criminal networks and unlawful activities.

The Bill proposes to amend section 54C (5) of the Act by substituting the word “Agency” with the words “Oversight Board” in relation to the approval of the Agency’s annual budget. This is consistent with the proposed functions of the Oversight Board under the proposed section 55B.

The Bill proposes to insert new sections for the establishment, membership, functions, committees and procedures of the Asset Recovery Oversight Board.



The Bill proposes the introduction of new provisions 130A and 130B limiting the rights to privacy as far as prevention, detection and investigation of money laundering and financing of terrorism is concerned.

The Bill further seeks to amend the First Schedule to the Act to include the Law Society of Kenya and the Sacco Societies Regulatory Authority as supervisory bodies for purposes of the Act.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill delegates powers to the Cabinet Secretary responsible for the National Treasury to make regulations for the conduct of business and affairs of the Asset Recovery Oversight Board. It proposes to limit the right to privacy for purposes of prevention, detection and investigation of money laundering and financing of terrorism.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 25th August, 2021.

AMOS KIMUNYA  
*Leader of the Majority Party.*



*Section 2 of No. 9 of 2009, which it is proposed to amend—*

### **Interpretation**

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

“account” includes any facility or arrangement by which a reporting institution does any one or more of the following—

- (a) accepts deposits of monetary instruments;
- (b) allows withdrawals of monetary instruments or transfers into or out of the account;
- (c) pays cheques or payment orders drawn on a financial institution or collects cheques or payment orders on behalf of any person;
- (d) supplies a facility or arrangement for a safety or fixed term deposit box;

“accounting officer” means an accounting officer appointed under section 17 of the Government Financial Management Act, 2004 (No. 5 of 2004);

“affected gift” means any gift made by the defendant at any time, if it was a gift of property—

- (a) received by that defendant in connection with an offence committed by him or any other person; or
- (b) any part thereof, which, directly or indirectly represents, in that defendant’s hands, the property which that person received in that connection with an offence:

Provided that any such gift was made on or after the commencement of this Act;

“Agency” means the Assets Recovery Agency established under section 53(1);

“Agency Director” means the Director of the Agency appointed under section 53(2);



“authorised officer” means—

- (a) a police officer;
- (b) an officer of the department of the Kenya Revenue Authority for the time being responsible for matters relating to customs;
- (c) Agency Director; or
- (d) any person or class of persons designated by the Minister as an authorised officer to perform any function under this Act;

“Board” means the Anti-Money Laundering Advisory Board established under section 49;

“Centre” means the Financial Reporting Centre established under section 21;

“confiscation order” means an order referred to in section 61;

“court” means a court of competent jurisdiction;

“customs” or “the customs” means the customs department of the Kenya Revenue Authority;

“data” means representations, in any form, of information or concepts;

“defendant” means a person against whom a prosecution for an offence has been instituted, irrespective of whether that person has been convicted or not;

“designated non-financial businesses or professions” means—

- (a) casinos (including internet casinos);
- (b) real estate agencies;
- (c) dealing in precious metals;
- (d) dealing in precious stones;
- (e) accountants who are sole practitioners, partners or employees within professional firms;



- (f) non-governmental organisations;
- (fa) trust and company service providers;
- (g) such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Centre, declare;

“Deputy Director” means the Deputy Director appointed under section 25;

“Director-General” means the Director-General appointed under section 25;

“document” means any record of information, and includes—

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images, writings or data can be retrieved, with or without the aid of anything else; or
- (d) a map, plan, drawing, photograph, video tape or similar thing;

“estate agency” in connection with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or other building forming part thereof, means doing any of the following acts—

- (a) bringing together, or taking steps to bring together, a prospective vendor, lessor or lender and a prospective purchaser, lessee or borrower; or
- (b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals;

“financial institution” means any person or entity, which conducts as a business, one or more of the following activities or operations—

- (a) accepting deposits and other repayable funds from the public;



- (b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;
- (c) financial leasing;
- (d) transferring of funds or value, by any means, including both formal and informal channels;
- (e) issuing and managing means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money);
- (f) financial guarantees and commitments;
- (g) trading in—
  - (i) money market instruments, including cheques, bills, certificates of deposit and derivatives;
  - (ii) foreign exchange;
  - (iii) exchange, interest rate and index funds;
  - (iv) transferable securities; and
  - (v) commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) otherwise investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment related insurance; and
- (m) money and currency changing;



“fixed date”, in relation to a defendant against whom—

- (a) a prosecution for an offence has been instituted, means the date on which such prosecution has been instituted; or
- (b) a restraint order has been made means the date of such restraints order,

whichever is the earlier date;

“Fund” means the Criminal Assets Recovery Fund established under section 109;

“inspector” means a person designated as such under this Act;

“Kenya Revenue Authority” means the Kenya Revenue Authority established by section 3 of the Kenya Revenue Authority Act (Cap. 469);

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance, and all references in this Act to “the Minister” shall be construed accordingly;

“monetary instruments” means—

- (a) coins and paper currency designated as legal tender of Kenya or of a foreign country and which is customarily used and accepted as a medium of exchange in Kenya or the country of issue;
- (b) travellers' cheques, personal cheques, bank cheques, money orders or securities;
- (c) any other negotiable instrument which is in bearer form, or other form through which title passes upon delivery;

“money laundering” means an offence under any of the provisions of sections 3, 4 and 7;

“offence” in this Act, means an offence against a provision of any law in Kenya, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya;

“person” means any natural or legal person;



“proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed;

“property” means all monetary instruments and all other real or personal property of every description, including things in action or other incorporeal or heritable property, whether situated in Kenya or elsewhere, whether tangible or intangible, and includes an interest in any such property and any such legal documents or instruments evidencing title to or interest in such property;

“realizable property” means—

- (a) property laundered;
- (b) proceeds from or instrumentalities used in, or intended to be used in money laundering or predicate offences;
- (c) property that is the proceeds of, or used, or intended or allocated for use in, the financing of any offence; and
- (d) property of corresponding value;

“regulations” means regulations made under this Act;

“reporting institution” means a financial institution and designated non-financial business and profession;

“restraint order” means an order made under section 68;

“supervisory body” means a functionary or institution specified in the First Schedule, or such other functionary or institution as may be prescribed by the Minister;

“tainted property” in relation to an offence means—

- (a) any property used in, or in connection with, the commission of the offence;



- (b) any proceeds of the offence; or
- (c) any property in Kenya which is the proceeds of a foreign offence in respect of which an order may be registered, and when used without reference to a particular offence means tainted property in relation to an arrestable offence.

*Section 25 of No. 9 of 2009, which it is proposed to amend—*

### **Appointment of Director and Deputy Director**

**25.** (1) There shall be a Director-General and a Deputy Director of the Centre.

(2) The Director-General and the Deputy Director shall be fit, competent and proper persons, recommended by the Board and approved by the National Assembly for appointment to their respective positions.

(3) On approval of a person by the National Assembly under subsection (2), the Minister shall appoint that person to the office in respect of which the approval was given.

(4) A person shall not be appointed as a Director-General or Deputy Director unless that person—

- (a) holds a degree in law, economics or finance from a recognised institution;
- (b) has at least seven years work experience in the relevant field; and
- (c) meets such other requirements that may be prescribed by the Board.

(5) The persons appointed as the Director and the Deputy shall hold office—

- (a) for a term of four years and three years, respectively, subject to renewal for one further term of four years and three years, respectively; and
- (b) on such terms and conditions as may be determined by the Board and set out in the instrument of appointment which shall include specific and measurable performance targets.



(6) The provisions of subsection (3) shall apply to the renewal of an appointment under subsection (5)(a).

*Section 26 of No. 9 of 2009, which it is proposed to amend—*

### **Resignation of Director-General or Deputy Director**

26.(1) The Director-General or the Deputy Director may resign by a written resignation addressed to the Minister.

(2) A resignation is effective upon being received by the Minister or by a person authorized by the Minister to receive it.

*Section 27 of No. 9 of 2009, which it is proposed to amend—*

### **Removal from office**

27. (1) The Minister may, in consultation with the Board, remove the Director-General or Deputy Director from office on the grounds of gross misconduct, mental or physical incapacity or failure to satisfy the terms and conditions of service set forth in section 25(5)(b), or—

- (a) where there is proof of a financial conflict of interest with any reporting institution;
- (b) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or
- (c) if he has been convicted of an offence for which one may be sentenced to imprisonment for a term exceeding six months.

(2) The Minister may, in consultation with the Board, suspend the Director-General or Deputy Director from office pending determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist.

*Section 30 of No. 9 of 2009, which it is proposed to amend—*

### **When Deputy Director may act**

30. The Deputy Director may act for the Director-General and shall exercise all the powers and perform all the functions conferred on the Director-General under this Act whenever the Director-General is temporarily absent, and shall perform such other functions as the Director may, from time to time, assign to him.



*Section 32 of No. 9 of 2009, which it is proposed to amend—*

**Oath of confidentiality**

**32.** The Director-General, the Deputy Director and staff of the Centre shall—

- (a) before they begin to perform any duties under this Act, take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality prescribed in the Third Schedule;
- (b) maintain, during and after their employment, the confidentiality of any matter which they came across during their tenure of office.

*Section 48 of No. 9 of 2009, which it is proposed to amend—*

**Application of reporting obligations**

**48.** The reporting obligations under this Part shall apply to—

- (a) accountants when preparing or carrying out transactions for their clients in the following situations—
  - (i) buying and selling of real estate;
  - (ii) managing of client money, securities or other assets;
  - (iii) management of bank, savings or securities accounts;
  - (iv) organisation of contributions for the creation, operation or management of companies;
  - (v) creation, operation or management of buying and selling of business entities or legal arrangements; or
- (b) a trust or company service provider not otherwise covered elsewhere in this Act, which as a business, provides any of the following services to third parties—
  - (i) acting as a formation agent of legal persons;
  - (ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;



- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- (iv) acting as, or arranging for another person to act as, trustee of an express trust;
- (iv) acting as or arranging for another person to act as, a nominee shareholder for another person.

*Section 53 of No. 9 of 2009, which it is proposed to amend—*

**The Agency and its Director**

**53.** (1) There is established a body to be known as Assets Recovery Agency, which 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) holding and alienating movable and immovable property;
- (c) borrowing and lending money;
- (d) doing and performing all such other acts or things as may be lawfully done by a body corporate.

(2) The Attorney-General shall appoint a fit, competent and proper person to be the Director of the Agency (hereinafter referred to as the “Agency Director”).

(3) For a person to be appointed as the Agency Director, the person shall—

- (a) hold a degree in law, economics or finance from a recognized university;
- (b) hence in a relevant field, five of which shall been at senior management level;
- (c) have such other requirements that may be prescribed by the Attorney-General.

(4) The Agency Director may, with the approval of the Attorney-General, obtain such number of staff on secondment and on such terms and conditions of service as may be approved by the Attorney-General, and may make such arrangements for the provision of services, as he considers appropriate for or in connection with the exercise of his functions.



(5) Anything which the Agency Director is authorised or required to do may be done by—

- (a) a member of staff of the Agency, or
- (b) a person providing services under arrangements made by the Agency Director,

if authorised by the Agency Director (generally or specifically) for that purpose

*Section 53A of No. 9 of 2009, which it is proposed to amend—*

### **Staff of the Agency**

**53A.** (1) Despite the provisions of section 53, the agency may, for the proper discharge of its functions, appoint professional and technical staff and other staff, upon such terms and conditions as the Attorney General, in consultation with the Salaries Remuneration Commission, approve.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, forensic and financial investigators, asset managers and other staff as the Agency may determine.

(3) In determining the terms and conditions of service for the Agency Director and staff, the Attorney General shall be guided by the following principles—

- (a) that asset recovery falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation; and
- (b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility.

(4) The Agency shall, with the approval of the Cabinet Secretary for finance, establish a suitable social security scheme for the Agency Director and staff of the Agency.

(5) For the purposes of their functions under the Act, the Agency Director, certified forensic and financial investigators, shall have all the powers, privileges and immunities of a police officer in addition to any other powers they may have under the Act.

(6) Any public officer who is transferred or seconded to the Agency under section 53(4) shall be regarded as a member of staff of the Agency and subject to the control and direction of the Agency.

(7) The Agency may, with the approval of the Attorney General, make regulations for the better management, administration and operations of the Agency.



*Section 54A of No. 9 of 2009, which it proposed is to amend—*

**Funds of the Agency**

(1) Parliament shall allocate adequate funds to the Agency to enable the Agency perform its functions under the Constitution, this Act and any other written law and the budget shall be a separate vote in accordance with Article 249(3) of the Constitution.

(2) The funds of the Agency shall consist of—

- (a) monies provided for by Parliament for the purposes of the Agency;
- (b) a percentage of the total proceeds recovered or realized from any property seized or forfeited to the Government, as may be prescribed, from time to time, with the approval of the Cabinet Secretary for finance;
- (c) such monies or assets as may accrue to the Agency in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) all monies from any other source provided, donated or granted to the Agency towards the achievement of the objects of the Agency.

(3) The Agency shall not accept any grant, gift, donation or bequests made on condition that the Agency performs any function or discharges any duty or obligation other than duties under the Constitution or this Act.

(4) The Agency shall disclose any grants, gifts, donations or bequests made to it in each financial year.

(5) The Agency Director shall, subject to the law, be charged with the responsibility of accounting for state monies received or paid out or on account of the Agency.

(6) The receipts, earnings or accounts of the funding and balance of the funding at the close of each financial year, shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Agency.

*Section 54C of No. 9 of 2009, which it is proposed to amend—*

**Estimates of expenditure**

**54C.** (1) The financial year of the Agency shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.



(2) The Agency shall within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Agency for that financial year.

(3) The annual estimates shall make provisions for all the estimated expenditure of the Agency for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the Agency Director and other staff of the Agency;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Agency;
- (c) the maintenance of the buildings and grounds of the Agency;
- (d) the funding of training, research and development of activities of the Agency; and
- (e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Agency may deem expedient.

(4) The annual estimates shall make provisions for all estimated expenditure of the Agency for the financial year to which they relate, including of reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(5) The Agency shall review the estimates forwarded under subsections (2) and (3) and may make such alterations thereto as it may consider necessary, and shall forward the same to the National Assembly for approval.

(6) Upon approval of the estimates by the National Assembly, all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Agency's bank account.



*First Schedule of No. 9 of 2009, which it is proposed to amend—*

**FIRST SCHEDULE [Section 2.]**

**SUPERVISORY BODIES**

1. The following institutions are the supervisory bodies referred to in section 2—

- (a) Central Bank of Kenya;
- (b) Insurance Regulatory Authority;
- (c) Betting and Licensing Control Board;
- (d) Capital Markets Authority;
- (e) Institute of Certified Public Accountants of Kenya;
- (f) Estate Agents Registration Board;
- (g) Non-Governmental Organizations Co-ordination Board;
- (h) Retirement Benefits Authority.