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NAIROBI, 5th April, 2022

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Bill for Introduction into the National Assembly—

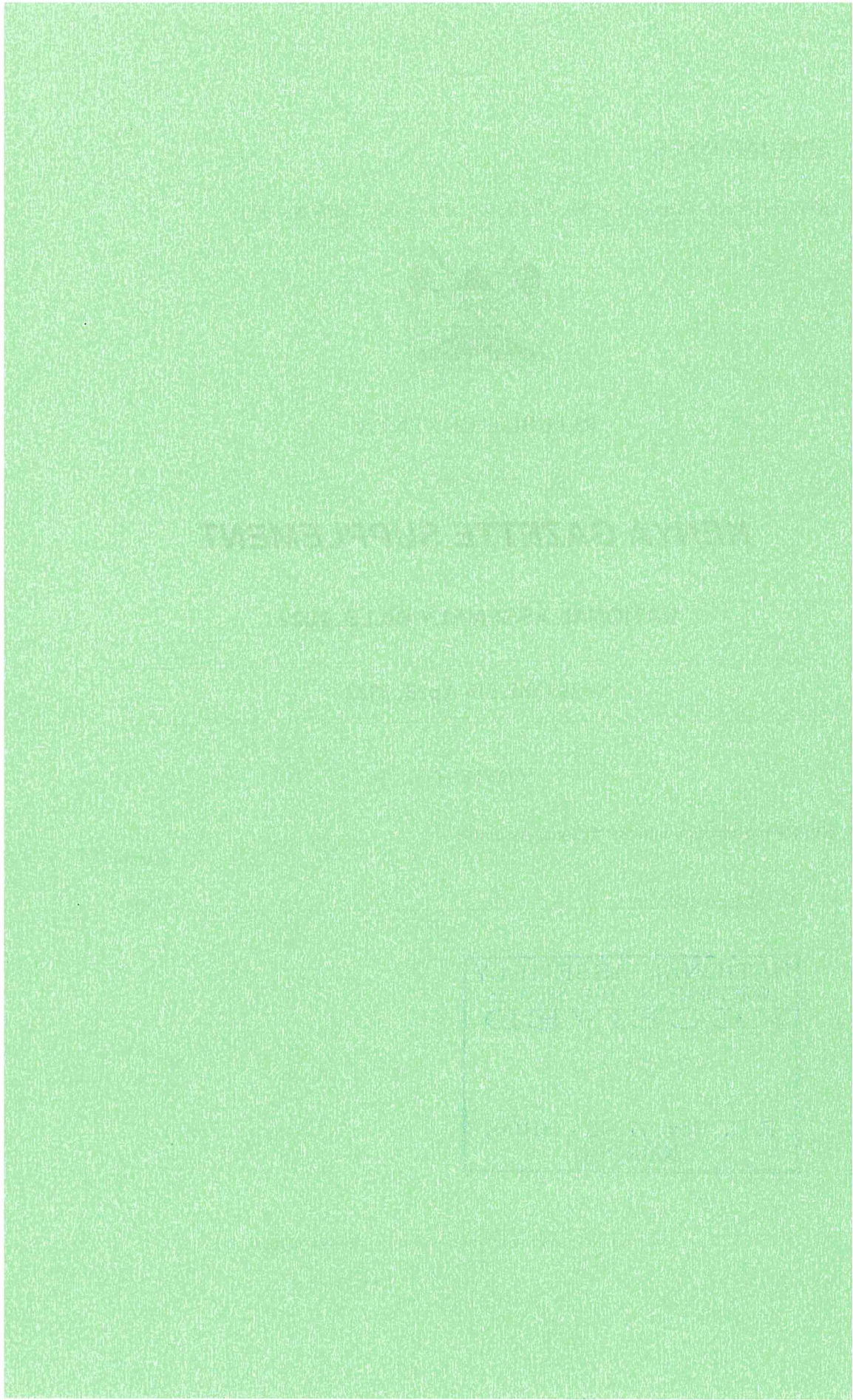
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NATIONAL ASSEMBLY
DIRECTORATE OF LEGAL SERVICES
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Clause

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THE VALUERS BILL, 2022

A Bill for

AN ACT of Parliament to establish the Valuers Board of Kenya; to provide for the registration and licensing of valuers; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Valuers Act, 2022.

Short title.

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

Interpretation.

“Board” means the Valuers Board of Kenya established under section 7;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to land;

“certificate” means a Certificate of Registration issued under section 33;

“Chief Government Valuer” means a valuer appointed under section 5;

“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ a valuer and any person who is or may be liable to pay to a valuer any costs;

“Council” means the Council of the Institution of Surveyors of Kenya;

“former Board” means the Valuers Registration Board;

“land” has the meaning assigned to it under Article 260 of the Constitution;

“licensed valuer” means a person licensed under section 40;

“property” has the meaning assigned to it under Article 260 of the Constitution;

“register” means the register kept under section 35;

“registered valuer” means a person registered under section 27;

“Registrar” means the Registrar of the Board appointed under section 18;

“valuation” means the process of determining the value of any property or liability on a stated basis at a specified date for a particular purpose; and

“Valuation Chapter” means the Valuation Chapter of the Institution of Surveyors of Kenya.

3. The practice of valuation shall be guided by guided by the national values and principles set out in the Constitution and laws of Kenya.

Values and principles of valuation.

4. Each valuer shall observe the established code of conduct, standards and practice guidelines issued by the Institution of Surveyors of Kenya.

Code of conduct.

PART II – CHIEF GOVERNMENT VALUER

5. (1) There shall be a Chief Government Valuer who shall be the principal advisor to the government on all matters relating to valuation.

Chief Government Valuer.

(2) The Chief Government Valuer shall be appointed by the Public Service Commission through a competitive recruitment process.

6. (1) A person shall qualify for appointment as the Chief Government Valuer if that person—

Qualification of the Chief Government Valuer.

- (a) is a citizen of Kenya;
- (b) has a minimum of a Bachelor’s degree from a university recognised in Kenya in –
 - (i) land economics;
 - (ii) real estate; or
 - (iii) any other relevant field;
- (c) has not less than fifteen years experience in the valuation practice;
- (d) is a full member of the Institution of Surveyors of Kenya (Chapter on Valuation) and in good standing; and

- (e) meets the requirements of Chapter Six of the Constitution.

**PART III— ESTABLISHMENT, FUNCTIONS
AND POWERS OF THE VALUERS BOARD OF
KENYA**

7. (1) There is established the Valuers Board of Kenya. Establishment of the Board.

(2) The Board is 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 and disposing of movable 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 performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

8. (1) The headquarters of the Board shall be in Nairobi. Headquarters of the Board.

(2) The Board may establish offices in other counties.

9. The Board shall perform the following functions— Functions of the Board.

- (a) register and license valuers;
- (b) facilitate the acquisition of knowledge in valuation by members;
- (c) ensure that all persons who practise valuation in Kenya meet the standards of learning, professional competence and conduct that is appropriate for the services;
- (d) set, maintain and continuously improve the standards of learning, professional competence, professional and ethical conduct for the practice of valuation in Kenya;

- (e) determine, maintain and enhance the standards of professional practice and ethical conduct, and learning for the valuation profession in Kenya;
- (f) promote and enhance continuous professional development for registered valuers in conjunction with the Institution of Surveyors of Kenya (Valuation Chapter);
- (g) conduct such assessments as may be necessary to determine an applicant's eligibility for registration by the Board;
- (h) formulate policies that promote the restructuring of the valuation profession in Kenya to embrace the spirit, principles, values and objects of the Constitution;
- (i) contribute to the development of international and national policies and legal framework, strategies and plans in land management to promote sustainable development;
- (j) co-operate with local, national, regional and international organisations on matters of mutual interest in the valuation practice;
- (k) advise the government and general public on matters relating to the practice of valuation in Kenya; and
- (l) do all such other things as are incidental to the foregoing functions.

10. The Board shall consist of the following members—

Membership of the Board.

- (a) a chairperson appointed by the Cabinet Secretary;
- (b) the Chief Government Valuer;
- (c) the Chairperson of the Valuation Chapter of the Institution of Surveyors of Kenya;
- (d) one person nominated by public universities offering courses in land economics or real estate;
- (e) two persons in public service, one of whom shall be employed in the county government, elected by

the Valuation Chapter of the Institution of Surveyors of Kenya;

- (f) two persons in private practice elected by the Valuation Chapter of the Institution of Surveyors of Kenya; and
- (g) the Registrar who shall be an *ex officio* member.

11. A person shall qualify for appointment to the Board if that person—

Qualification for appointment as a Board Member.

- (a) is a full member of the Valuation Chapter of the Institution of Surveyors of Kenya;
- (b) has been in practise for at least fifteen years in the case of the Chairperson and ten years for any other member since registration as a member;
- (c) has not been found liable for professional misconduct by the Board in the three years immediately preceding the nomination or election; and
- (d) meets the requirements of Chapter Six of the Constitution.

12. (1) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) resigns in writing by a notice addressed to the Cabinet Secretary;
- (f) ceases or is suspended from full membership of the Valuation Chapter of the Institution of Surveyors of Kenya;
- (g) dies; or

- (h) is removed in accordance with the provisions of the Constitution.

(2) The Board shall be properly constituted notwithstanding a vacancy in its membership.

13. The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have the power to—

Powers of the Board.

- (a) manage, control and administer its assets in such a manner and for such purposes as best promotes the purpose for which the Board is established;
- (b) open such bank accounts for its funds as may be necessary;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (d) subject to approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine;
- (e) receive gifts, grants, donations or endowments made to the Board and make disbursements therefrom;
- (f) enter into association with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Board is established; and
- (g) undertake any activity necessary for the fulfillment of any of its functions.

14. The Chairperson and members appointed under section 10 (d), (e) and (f) shall hold office for a term of three years renewable for one further term only.

Term of office.

15. The Board shall conduct its affairs in accordance with the provisions of the Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

16. (1) The Board may establish such committees as may be necessary for the effective carrying out of its functions under this Act. Committees of the Board.

(2) The membership of the committees shall be drawn from the Board.

(3) The committees to be established under subsection (1) shall include a committee on ethics and standards and a committee on dispute resolution.

17. The members of the Board shall be paid such allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission. Remuneration.

18. There shall be a Registrar of the Board who shall be appointed by the Board through a competitive recruitment process. Registrar.

19. (1) A person shall qualify for appointment as the Registrar if that person— Qualification of the Registrar.

- (a) is a citizen of Kenya;
- (b) is a full member of the Valuation Chapter of the Institution of Surveyors of Kenya;
- (c) has a minimum of a Bachelor's degree from a university recognised in Kenya in—
 - (i) land economics;
 - (ii) real estate; or
 - (v) any other relevant field; and
- (d) has not less than five years' experience in the valuation practice.

(2) The Registrar shall hold office on such terms and conditions of employment as the Board may determine.

20. (1) The Registrar shall be responsible for the— Functions of the Registrar.

- (a) day-to-day operations of the Board;
- (b) administration, organisation and control of the staff of the Board;
- (c) management of funds, property and affairs of the Board;

- (d) implementation of the policies and programmes of the Board;
- (e) development of an operations plan for achieving the Board's objectives; and
- (f) performance of any other duty necessary for the implementation of this Act as may be assigned to the Registrar by the Board.

(2) The Registrar shall submit to the Board for approval, not later than three months before the commencement of each financial year, a programme of activities of the Board in respect of that financial year.

21. (1) The Board may remove the Registrar from office in accordance with the terms and conditions of service on grounds of—

Removal of the Registrar.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify the removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Registrar shall be—

- (a) informed in writing of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against the allegations.

22. The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act, upon such terms and conditions of service as the Board may determine in consultation with the Salaries and Remuneration Commission.

Staff.

23. The Board may engage the services of such experts in respect of any of its functions in which the experts have special competence.

Experts.

Common Seal.

24. (1) The common seal of the Board shall be kept in the custody of the Registrar or of such other person as the Board may direct, and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Registrar.

(3) The Board shall in the absence of either the Chairperson or the Registrar, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the Chairperson or the Registrar.

(4) The common seal of the Board 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.

Protection from personal liability.

25. (1) No matter done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done *bona fide* for the purpose of executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable in an 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 Board, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages.

26. The provisions of section 25 shall not relieve the Board 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.

PART IV—REGISTRATION

27. Subject to the provisions of this Act, a person shall be eligible for registration under this Act as a valuer if he or she —

Qualification for registration as a valuer.

- (a) is a citizen of Kenya;
- (b) has a minimum of a Bachelor's degree from a university recognised in Kenya in—
 - (i) land economics;
 - (ii) real estate; or
 - (iii) any other relevant field
- (c) has undergone a tutillage programme under a licensed valuer for a period of two years;
- (d) has passed the professional assessment examination conducted by the Institution of Surveyors of Kenya (Valuation Chapter); and
- (e) is a full member of the Valuation Chapter of the Institution of Surveyors of Kenya;

28. (1) A person eligible to be registered as a valuer under section 27 may apply to the Registrar, in the prescribed form and on payment of the prescribed fee, to be registered under this Act.

Application for registration as a valuer.

(2) An application made under subsection (1) shall be accompanied with certified copies of certificates and other documents as are necessary to prove qualification for registration.

29. Subject to the provisions of this Act, a person may register a valuation firm if—

Registration of a valuation firm.

- (a) the firm has a certificate of registration of a business name or a certificate of incorporation;
- (b) each partner or director is registered as a valuer and has a valid licence;
- (c) he or she fulfills any other condition as may be stipulated by the Board.

30. (1) A person who wishes to register a valuation firm under section 29 may apply to the Registrar, in the prescribed form and on payment of the prescribed fee, to be registered under this Act.

Application for registration as a valuation firm.

- (2) An application made under subsection (1) shall—
- (a) be accompanied with such documents as are necessary to prove qualification for registration;
 - (b) provide the firm's profile of activities;
 - (c) provide curriculum vitae of partners or directors; and
 - (d) be accompanied with a written commitment that the Board shall be allowed to verify the suitability of the firm for the purposes of registration.

(3) The Board may require the applicant to furnish such further information or evidence of eligibility for registration as it may consider necessary and may require the applicant to appear in person for an interview before the Board.

31. A foreign person shall not be registered as a valuer unless he or she —

Restriction on registration of foreigners.

- (a) possesses the necessary qualifications recognized for the practice of valuation as a valuer in the country where he or she normally practises and that immediately before entering Kenya, he or she was practising as a valuer and holds a valid licence;
- (b) undergoes a tutillage programme under a licensed valuer for a period of two years;
- (c) passes the professional assessment examination conducted by the Institution of Surveyors of Kenya (Valuation Chapter); and
- (d) becomes a full member of the Valuation Chapter of the Institution of Surveyors of Kenya.

32. (1) The Registrar shall, so far as is practicable, bring every application before the Board for consideration at its first meeting after receiving the application.

Consideration by the Board.

(2) Where a person has complied with the provisions of this Act and has been accepted by the Board as being eligible for registration, that person shall be registered.

(3) The decision of the Board on an application for registration shall be communicated to the applicant by the Registrar by letter sent to the address stated in the

application within twenty one working days from the date of the decision of the Board.

(4) After the name of a person is entered in the Register, the Board shall issue a certificate that has been sealed with the seal of the Board to the person.

(5) Where the name of a person has been removed from the register, the Board shall give notice to that person, or the legal representative in case the person is dead, requiring the certificate to be surrendered to the Board.

(6) A person who fails to comply with the requirements of a notice given under subsection (5) within twenty one days of receipt shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both.

(7) The Board may issue other identification documents that are valid for a specified period to a person registered under this Act.

(8) A certificate of registration and other identification documents issued under this section shall remain the property of the Board.

(9) Where the Registrar is satisfied that a certificate of registration or any other document has been lost, mutilated or destroyed, the Registrar may, upon payment of a fee set by the Board, from time to time, furnish a duplicate of the certificate of registration or any other document to the person to whom the original certificate of registration or documents were issued.

33. (1) Every person whose name has been entered in the Register as a valuer shall, for as long as his or her name remains in the Register, be entitled to adopt and use the title "Registered Valuer" after his or her name or such contraction thereof as the Board may, from time to time, approve and may, subject to section 38, offer his or her professional valuation services to the public for gain or reward or by way of trade or for employment.

Effect of
registration.

(2) Any person, other than a valuer registered under this Act, who uses the title "Registered Valuer" before their names commits an offence and shall be liable on conviction

to a fine not exceeding one million shillings or imprisonment for a term not exceeding one year or to both.

34. Any person aggrieved by the decision of the Board—

Appeals against refusal to register, suspension and removal of name.

- (a) refusing to register his or her name;
- (b) removing his or her name from the register;
- (c) suspending his or her registration under this Act; or
- (d) refusing to restore his or her name in the register,

may, within twenty-eight days of receiving the written decision of the Board, appeal to the High Court.

PART V—REGISTER

35. (1) The Registrar shall keep and maintain a Register of all registered persons or firms under this Act in such manner as the Board may prescribe.

Register.

(2) The Register shall show the following details against the name of a person or firm whose name is entered in the Register—

- (a) date of entry;
- (b) address;
- (c) qualifications;
- (d) nationality; and
- (e) such other particulars as the Board may, from time to time, direct.

(3) Any person may inspect the Register and obtain from the Registrar a copy of or an extract from the Register, on payment of a prescribed fee.

36. (1) The Registrar may, from time to time, make changes or corrections in the Register relating to any entry.

Alteration of the Register.

(2) Any changes or corrections in the entries made under this section shall be made by the Registrar as soon as it is practical after receipt of authenticated notification thereof.

37. The Registrar shall remove from the Register the name of any person —

Removal of a person from the register.

- (a) found to be of unsound mind or a firm which has ceased to practise or wound up by a court order;
- (b) whose name the Board has directed that it should be removed from the Register;
- (c) declared bankrupt;
- (d) who has failed to pay the prescribed fee;
- (e) who has had his or her qualification under section 27 (b) or (c) withdrawn or cancelled by the body through which it was acquired or awarded;
- (f) who has failed to satisfy requirements for continuing professional development programme for the time being in force;
- (g) who causes or permits or suffers any sole proprietorship, partnership or body corporate in which he is a sole proprietor, partner, director or shareholder to practise as a firm prior to its registration by the Board or after the Board has suspended or cancelled its registration;
- (h) who has failed within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the last known address appearing in the Register against his or her name, to respond to the inquiry of the Registrar;
- (i) who requests that his or her name be removed from the Register, in which case that person may be required to satisfy the Board by way of an affidavit lodged with the Registrar that criminal proceedings under this Act are not being or are not likely to be taken against him; or
- (j) any person whose name has been incorrectly or fraudulently entered.

38. (1) The Registrar shall cause to be published in the *Kenya Gazette* not later than the 31st day of March of every calendar year, particulars of all registered and validly licensed persons or firms.

Publication of registration.

(2) A publication made under this section shall be prima facie evidence that a person or firm named therein is registered under this Act and the deletion from the register of the name of any person or firm notified by such publication, or the absence of the name of any person or firm from such publication, shall be prima facie evidence that such person or firm is not so registered.

(3) A person or a firm whose details have not been entered, or are erroneously entered into, the Register, shall notify the Registrar within thirty days from the date of publication of particulars of registration in the *Kenya Gazette* pursuant to subsection (1), for the necessary correction or amendment to be made, upon which the Registrar shall publish in the *Gazette* the corrected or amended particulars with respect to that person or firm.

PART VI— LICENSING AND PRACTICE

39. (1) A person shall not engage in the practice of valuation unless that person has been issued with a licence and has complied with the requirements of this Act. Practising licence.

(2) A person applying for a licence shall be required to submit in the prescribed manner a certificate of continuing professional development issued by the Board, a statutory declaration confirming that no professional complaint has been made against him or her and pay the prescribed fee.

(3) A licence issued under subsection (1) shall be valid for one year from the 1st of January to the 31st December of that particular year and may, upon expiry, be renewed.

(4) The Registrar shall enter into the Register the date of issuance of a licence of every person licensed under this section.

(5) A person who contravenes subsection (1) commits an offence.

40. A valuer shall on application of the practising licence appoint a nominee, who is a licensed valuer, who shall carry on his or her business for the purpose of winding up in the event of his or her – Nomination of a valuer in case of winding up.

- (a) death;
- (b) insolvency; or
- (c) by reason of being adjudicated as being of unsound mind.

41. (1) A person whose licence has not been renewed for a year or a longer period and who wishes to have it renewed may apply to the Board. Renewal of licence.

(2) An application made under subsection (1) shall be accompanied by—

- (a) an affidavit in a prescribed form explaining the reasons for non-renewal;
- (b) licence fees for the current practising period and at the Board's discretion, any unpaid fees, including penalties as prescribed by the Board; and
- (c) proof of fulfilment of all applicable conditions for renewal of a licence.

(3) The Board may, with sufficient cause, refuse to issue or renew a licence and shall communicate the refusal and give reasons for such refusal to the applicant within twenty-one days of making the decision.

42. (1) A person shall not be entitled to recover a charge for valuation services unless that person is licensed under this Act. No fees to be charged by unlicensed persons.

(2) A person who contravenes the provisions of subsection (1), commits an offence.

43. The Board may suspend a licence issued under this Act where— Suspension of a licence.

- (a) allegations of misconduct have been investigated and proved against a licensee;
- (b) a false declaration was made in an application for a licence; or
- (c) a licensee has contravened any provision of this Act.

44. The Board shall cancel a licence where a licensee— Cancellation of a licence.

- (a) is convicted of an offence under this Act or the rules made thereunder; or
- (b) ceases to be qualified for the issue of a licence under this Act.

45. (1) A person whose name has been removed from the Register or whose licence issued under this Act has been suspended or cancelled shall not engage in the practice of valuation during the duration of removal of name, suspension or cancellation of the licence.

Effect of removal of name, suspension or cancellation of a licence

(2) Subject to subsection (3), the Registrar shall notify a person whose name has been removed from the Register, by registered mail sent to the address appearing in the Register against his or her name immediately before the removal.

(3) Subsection (2) shall not apply where a person's name has been removed from the Register at his or her request or with his or her consent.

46. Where a directive has been made by the Board for the removal of a person's name from the Register, or for suspending a person's registration under this Act, or for cancelling or suspending a licence issued to that person under this Act, the Board may, on application in a prescribed manner by the person concerned and after holding such inquiry as the Board may consider necessary—

Application for review of the Board's decision.

- (a) cause the removal from the Register to be confirmed and direct the surrender of the licence and certificate of registration within fourteen days after notification to that person by way of registered post;
- (b) recommend deregistration of the Valuer by the Institution of Surveyors of Kenya (Valuation Chapter);
- (c) cause the name of the person to be restored in the Register;
- (d) terminate the suspension of the registration;
- (e) as the case may be, issue a new licence; or
- (f) terminate the suspension of the existing licence—
 - (i) without a fee; or
 - (ii) on payment of such fee not exceeding the fee chargeable upon registration or issuance of a licence,

as the Board may determine.

47. The cancellation, revocation or withdrawal of a licence under this Act shall be published in the Kenya Gazette and a newspaper with a national circulation.

Publication upon cancellation, revocation or withdrawal of a licence.

48. (1) Every valuer practising on his or her own behalf shall purchase a policy of insurance referred to as “a professional indemnity cover” which shall be used in the compensation of clients for loss or damage from claims in respect of any civil liability or breach of trust by the valuer or his or her employees.

Professional indemnity.

(2) For the purpose of subsection (1), the minimum policy of insurance entered into or issued by an insurance company shall be—

- (a) in the case of a business carried on by an individual registered valuer, a sum of one million shillings;
- (b) in the case of a business carried on by two or more individuals, the sum specified in paragraph (a) multiplied by the number of registered valuers; and
- (c) in the case of a business carried on by a body corporate, the sum specified in paragraph (a) multiplied by the number of directors.

(3) The Registrar shall ensure compliance with subsection (2) before issuing a licence to a valuer to whom this section is applicable.

(4) Any person who contravenes the provisions of this section shall be guilty of 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 one year or both.

Penalty.

PART VII — OFFENCES

49. (1) No unqualified person shall act as a valuer.

Unqualified person not to act as a valuer.

(2) Any person who contravenes subsection (1) shall—

- (a) be incapable of maintaining any suit for any costs in respect of anything done by him or her in the course of so acting; and
- (b) be required to refund any fees received.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both.

50. Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he or she is, qualified or recognized by law as qualified to act as a valuer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both.

Penalty for pretending to be a valuer.

51. Any valuer who agrees to share his or her profits in respect of valuation with any person not being a valuer shall be guilty of an offence:

Sharing profits.

Provided that this section shall not apply to the payment of any bonus to any of his or her employees being a bonus based or calculated on the valuer's total earnings or profits in respect of any period.

52. (1) A valuer shall not advertise his or her practice.

Advertising.

(2) Notwithstanding the provisions of subsection (1), a valuer may notify the public of the following—

- (a) a change of the business address;
- (b) the opening of a new branch;
- (c) a change of the partners; and
- (d) the closure of business.

53. Any person who obstructs or hinders, or knowingly makes a false or misleading statement to any member, officer, servant or agent of the Board who is carrying out duties under this Act, commits an offence.

Obstruction of officers of the Board.

PART VIII—COMPLAINTS AND DISCIPLINE BY THE BOARD

54. (1) A registered valuer shall be guilty of professional misconduct if he or she —

Professional misconduct.

- (a) enters into a partnership with an unregistered person to carry on business as practising valuers;

- (b) accepts any professional valuation work which involves the giving or receiving of discounts or commissions;
- (c) solicits instructions in any manner whatsoever or knowingly proceeds with work which is entrusted to another valuer before communicating with that valuer;
- (d) undertakes any specialized valuation work for which he or she is in doubt as to the adequacy of his or her professional experience to undertake;
- (e) prepares or certifies any statement which is false, incorrect or misleading by reason of the misstatement, omission or suppression of a material fact or otherwise;
- (f) deviates from the schedule of fees prescribed by the Board by charging less than the charges laid down without notifying the Board of his or her intention to do so, and the reasons for and extent of such deviation and receiving the Board's sanctions thereto;
- (g) undertakes or accepts instructions for professional work on the basis that if successful results is not attained, a reduction of the fees laid down in the scales of charges will be made or that no fees will be charged;
- (h) practises without a valid licence;
- (i) commissions another registered valuer and pays less than the agreed fees;
- (j) advertises or publicly offers his or her services by means of circulars, displays or otherwise;
- (k) conducts himself or herself in a manner which the Board may deem incompetent, dishonourable or grossly negligent in connection with the work performed by him or her;
- (l) offers, expresses or communicates to the public any criticism or adverse comment on the professional services or conduct of another registered valuer;

- (m) being a registered valuer in employment accepts professional work on his or her own account which is in conflict with the interest of his or her employer;
- (n) prepares a valuation report or offers advice in a matter which he or she has an interest however remote; or
- (o) gives expert evidence in courts or before other judicial bodies if he or she has an interest, however remote, in the proceedings other than proper and reasonable fees payable for the services.

(2) A registered valuer will be held responsible for the acts of members of his or her staff so far as they relate to matters coming within the scope of his or her professional practice.

55. (1) An inquiry into the conduct of a registered valuer may be instituted by the Board upon the Board's initiative or upon a complaint addressed to the Board in writing made by or on behalf of any person alleging professional misconduct on the part of a registered valuer. Initiation of an inquiry.

(2) In the case of a complaint made by a person, the complaint shall be in the prescribed form and shall include—

- (a) a copy of the valuation instructions;
- (b) a copy of a valuation report where applicable;
- (c) proof of payment;
- (d) any other relevant document.

56. The Board may require the complainant to file further particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit. Request for further particulars.

57. Upon receipt of a complaint against a valuer, the Board shall notify the valuer complained against, giving the grounds of the complaint under cover of registered letter sent to his or her last known address. Notice to valuer.

58. (1) The Board shall cause a statement to be prepared setting out the allegation of professional misconduct to be investigated. Statement of professional misconduct.

(2) The registrar shall transmit to each member of the Board and to the valuer whose conduct is subject of investigation a copy of the statement prepared in pursuance of subsection (1).

59. (1) The registrar shall give notice of the date, time and place fixed for the inquiry to the valuer whose conduct is the subject of inquiry not less than twenty one days to the date of inquiry.

Notice of date, time and place of inquiry.

(2) Where a valuer whose conduct is the subject of inquiry fails to appear either personally or by his or her advocate at the time and place fixed in the notice served to him or her, the inquiry may proceed notwithstanding his or her absence.

(3) The Board may of its own motion or upon a request by the valuer whose conduct is the subject of the inquiry adjourn the hearing upon such terms as it thinks fit.

60. (1) The chairperson of the Board shall take or cause to be taken a note of all the proceedings before the Board or may direct that a record of any proceedings before it shall be taken down in shorthand.

Proceedings to be recorded.

(2) Any party to an inquiry before the Board shall be entitled to inspect the record and any party entitled to be heard in any appeal under the Act shall be entitled to be supplied with a copy of the proceedings upon payment of the copying charges presented by the Board.

61. Where the Board is satisfied that any person registered or licensed under this Act has been—

Outcome of inquiry.

- (a) convicted of an offence under this Act or under any other law punishable by imprisonment, the commission of which, in the opinion of the Board, has dishonoured him or her in the public estimation;
- (b) guilty of negligence or malpractice in respect of his or her profession; or
- (c) guilty of impropriety or misconduct in respect of his or her profession,

the Board may —

- (a) issue a written warning or reprimand;

- (b) direct the removal of such person's name from the Register;
- (c) cancel such person's licence;
- (d) suspend such person's licence or registration for a period not exceeding two years;
- (e) impose a fine, for a natural person, not exceeding two hundred and fifty thousand shillings and, for a legal person, a fine not exceeding three million shillings; or
- (f) a combination of any of the above as the Board deems fit.

62. (1) For the purposes of proceedings at any inquiry held under this section, the Board may administer oaths, enforce attendance of persons as witnesses and production of books and documents as evidence.

Board to administer oaths and enforce attendance of persons.

(2) A person who fails when summoned by the Board to attend as witness or to produce any books or documents which he or she is required to produce, commits an offence.

63. A person aggrieved by a decision of the Board under this Act may, within thirty days from the date of the Board's decision, appeal to the High Court.

Appeals.

PART IX—FINANCIAL PROVISIONS

64. The Funds of the Board shall consist of—

Funds of the Board.

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Board;
- (b) gifts, grants, donations or endowments as may be given to the Board;
- (c) monies that may accrue to or vest in the Board in the course of the exercise of its functions under this Act;
- (d) fees for services rendered by the Board; and
- (e) monies from any other lawful source provided for the Board.

65. The financial year of the Board shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

66. At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Board for that year.

Annual estimates.

67. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Board.

Accounts and Audit.

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

(a) a statement of income and expenditure during the year; and

(b) a balance sheet of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

No. 34 of 2015.

PART X—MISCELLANEOUS PROVISIONS

68. (1) The right of access to information guaranteed under Article 35 of the Constitution is hereby limited under Article 24 of the Constitution to the nature and extent specified in subsection (2).

Limitation of the right to access information.

(2) The Board may decline to give information to an applicant where in its opinion the divulging of the information would compromise the integrity of the Board.

69. A valuer shall keep a record of his or her valuation assignments for a minimum period of six years.

Safekeeping of records.

70. (1) Notwithstanding any other provision of this Act, where any person ceases to carry on business as a practising valuer by reason of his or her—

Carrying on practice for purposes of winding up.

(a) death;

(b) insolvency; or

(c) being adjudicated as being of unsound mind,

the practice may be carried on for purposes of winding up or being disposed of by a licensed valuer appointed under section 40.

(2) In the absence of such nomination, the Chairperson of the Valuation Chapter of the Institution of Surveyors of Kenya shall through the Council appoint a licensed valuer to deal with the property of such entity for a period not exceeding twenty four months from the date of death or commencement of the disability.

71. Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

General penalty.

PART XI—PROVISIONS ON DELEGATED POWERS

72. (1) The Cabinet Secretary may in consultation with the Board, make regulations for the better carrying into effect the functions of the Act.

Regulations.

(2) The Regulations made under subsection (1) shall include regulations on—

- (a) the forms to be used under this Act; and
- (b) the charges which may be made for services rendered by valuers.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2.

No. 23 of 2013.

PART XII—REVOCATION AND SAVING

73. The Valuers Act is hereby repealed.

Repeal of Cap.
532.

74. Within a period of twelve months from the commencement of this Act, any partnership or body corporate that carries on the business of valuation shall ensure that each partner or director is registered as a valuer and has a valid licence.

Unregistered persons not to practice as valuers.

75. Upon the commencement of this Act, any member of the former Board shall be deemed to be a member of the reconstituted Board for the unexpired period of his or her term of service.

Members of the former Board.

76. All rights, obligations and contracts which, immediately before coming into operation of this Act, were vested in or imposed on the former Board shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Board.

Rights and Obligations.

77. (1) Every person who, immediately before the commencement of this Act, was an officer or member of staff of the former Board, not being then under notice of dismissal or resignation shall be an officer or member of staff of the Board.

Transfer of Staff.

(2) The Registrar of the former Board shall be the Registrar of the Board and shall serve for his or her unexpired term.

SCHEDULE (s. 15)
CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

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

(2) A meeting of the Board shall be held on such date and at such time as the Chairperson shall appoint.

(3) Unless the majority of the membership of the Board otherwise agree, at least fourteen days' notice of every meeting shall be given to every member.

(4) The Chairperson shall on the written application of at least one-third of the members, convene a special meeting of the Board.

(5) The quorum for the conduct of the business of the Board shall be one half of all the members.

(6) The Chairperson shall, when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof 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. Disclosure of interest by Board members.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

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

Execution of
instruments.

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

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to regulate the practice of valuation in Kenya. It is worth noting that the Valuers Act, Cap. 532 was enacted in the year one thousand nine hundred and eighty four (1984) and the practice of valuation has greatly changed since that time. There is thus need to enact a new law which will be in line with the Constitution and current practices in valuation.

PART I (Clauses 1-4) of the Bill provides for preliminary provisions of the Bill including the short title and the interpretation clause.

PART II (Clauses 5-6) of the Bill entrenches the office of the Chief Government Valuer in law.

PART III (Clauses 7-26) of the Bill deals with the establishment, functions and powers of the Board. Clause 7 specifically establishes the Valuers Board of Kenya. The functions and powers of the Board are outlined under clauses 9 and 13 respectively.

PART IV (Clauses 27-34) of the Bill deals with the requirements and process for registration as a valuer.

PART V (Clauses 35-38) of the Bill deals with the register of valuers.

Part VI (Clauses 39-48) of the Bill deals with the licensing and practice of valuers.

Part VII (Clauses 49 -53) of the Bill deals with offences.

Part VIII (Clauses 54 – 63) of the Bill deals with complaints and discipline by the Board.

PART IX (Clauses 64-67) of the Bill deals with the financial provisions. The sources of funds for the Board are outlined in clause 64. The Board is required to comply with prudent financial management systems including the provisions of the Public Audit Act, No. 34 of 2015.

PART X (Clauses 68-71) of the Bill contains miscellaneous provisions.

PART XI (Clause 72) of the Bill outlines the guiding principles for the Cabinet Secretary when formulating regulations.

PART XII (Clauses 73-77) of the Bill contains revocation and saving provisions.

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

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 23rd March, 2022.

MICHAEL MUCHIRA,
Member of Parliament.