

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**KAKAMEGA COUNTY ACTS, 2021**

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NAIROBI, 13th April, 2021

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**THE KAKAMEGA COUNTY WATER AND SANITATION SERVICES ACT, 2021**

**No. 1 of 2021**

*Date of Assent: 31st March, 2021*

*Date of Commencement: See Section 1*

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**THE KAKAMEGA COUNTY WATER AND SANITATION  
SERVICES ACT, 2021**

**AN ACT of the County Assembly of Kakamega to repeal the Kakamega County Water Act, 2019, the Kakamega County Rural Water and Sanitation Corporation Act, 2020 and to provide for the development, regulation and management of county public works related to water and sanitation services, storm water management systems, water conservation, establishment of water and sanitation services companies, provision of water and sanitation services and for the connected purposes**

**ENACTED** by the County Assembly of Kakamega, as follows—

**PART I—PRELIMINARY**

**Short Title and commencement**

1. This Act may be cited as the Kakamega County Water and Sanitation Services Act, 2021 and shall come into operation upon publication.

**Interpretation**

2. In this Act unless the context otherwise requires—

“authorized officer” means an officer undertaking enforcement under part XII of this Act;

“board” means the Board of Directors of the water and sanitation service providers as established under section 9 of the Act;

“chief officer” means the chief officer responsible for water services;

“county” means Kakamega county;

“department” means the county department responsible for water and sanitation services;

“executive committee member” means the county executive committee member for the time being responsible for water and sanitation services;

“other actors” means water and sanitation services providers other than those established under section 9 of the Act, and other bodies in the water sector established under this Act or under any other law;

“public works” includes storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

“regulatory board” means water regulatory services board as established under section 70 of the Water Act, 2016;

“riparian buffer” is an area around or situated next to bodies of water that act as buffers or cushions to that water body;

“riparian Land” means land that is adjacent to a water body;

“sanitation” means conditions relating to public health, especially the provision of clean drinking water and adequate sewage disposal, on site and offsite.

“scheme” means a water works from which portable water is supplied to consumers;

“storm water” means water resulting from natural precipitation and accumulation and includes ground water and spring water ordinarily conveyed by the storm water system, as well as sea water within estuaries, but excludes water in a drinking water or waste water reticulation system;

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

“water pollution incident” means an incident or occurrence which has a detrimental impact or a potential detrimental impact on the quality of the water in the storm water system to such an extent that public health or the natural ecosystem may be threatened;

“water and sanitation service provider” means a county water service provider established under section 9 of the Act;

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

### **Object and Purpose of the Act**

3. The object and purpose of this Act is to provide for a legal framework for implementation of Paragraphs 10(a) and 11 of Part 2 of the Fourth Schedule of the Constitution and Article 43(1) (b) and (d) thereof in order to—

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;
- (c) promote water catchment conservation and protection;
- (d) provide for the development and management of County water services public works;



- (e) provide for regulation of County water and sanitation public works;
- (f) ensure effective and efficient provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) enhance suitable management of water resources; and
- (i) promote inter Corporation collaboration and public participation in water resource development and management.

## **PART II—COUNTY GOVERNMENT FRAMEWORK FOR WATER SERVICES PROVISION**

### **County Water Department**

4. (1) The existing County Water Department, shall have the overall responsibility of regulating and overseeing the provision and management of water supply, and sanitation services in the County.

(2) The department comprises of—

- (a) the County Executive Member, who shall have overall responsibility of the department;
- (b) the Chief Officer;
- (c) directors recruited and assigned to the department by the County Public Service Board; and
- (d) other officers as recommended by the county executive committee member to the County Public Service Board.

(3) The department shall decentralize its services to the lowest unit of the County's administration to ensure the provision of safe and adequate water throughout the County.

### **Functions of the department**

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

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

- (a) formulate and review periodically strategies and plans for implementation of water resource standards and catchment protection in the County;



- (b) formulate and periodically review county policies, strategies and plans for the development and provision of water services;
- (c) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national law on the management of water resources and provision of water and sanitation services;
- (d) coordinate and oversee the management of water resources in the county;
- (e) coordinate and oversee the development and provision of water and sanitation services within the county;
- (f) mobilize financial and other resources for the provision of water and sanitation services;
- (g) prepare a report for the County Assembly each quarter, on the state of management of water resources and water and sanitation services in the county; and
- (h) prepare a report to the county assembly or any other agency each quarter on the state of the management of water resources and source catchment in the County.

(3) In the performance of the functions and duties under this Act the County Executive Committee Member shall—

- (a) consult and coordinate with the departments, agencies and entities of the national and county government whose functions affect the development and provision of water as a resource and water and Sanitation services; and
- (b) consult with relevant stakeholders including nongovernmental organizations, the private sector and consumer groups.

(4) In the discharge of the duties and functions under this Act, the County Executive Committee Member shall be assisted by the Directorate of Water and Sanitation Services established under this Act.

### **The Directorate of Water and Sanitation Services**

6. (1) The Directorate of Water and Sewerage Services is hereby established and shall be headed by the Director of Water and Sanitation Services.

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

**Functions of the Directorate**

7. The duties and functions of the Directorate shall be to—

- (a) provide technical support and advice to the County Executive Committee Member in the discharge of the functions;
- (b) implement and give effect to the county water resource and water and sanitation services strategy;
- (c) keep a register of other water services providers operating within the county;
- (d) implement a system and requirements for registration of licensed water services providers operating within the county in line to national legislation;
- (e) in consultation with the Water Services Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county;
- (f) gather, collate and analyze information and disseminate data on water and sanitation services in the county;
- (g) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water and sanitation services;
- (h) provide operational, technical and other support to water service providers;
- (i) receive and address complaints regarding the provision of water services through the companies; and
- (j) perform such other duties and functions in relation to the provision of water and sanitation services as are assigned to it by the County Executive Committee Member.

**County Water and Sanitation Services Strategy**

8. (1) In every five years, following public consultation the County Executive Committee member shall formulate a county water and Sanitation services strategy.

(2) The County Water and Sanitation Services Strategy shall be formulated in compliance with Article 10 of the Constitution and shall have the objective of fulfilment of the fundamental human right to clean and safe water in adequate quantities, and the right to reasonable standards of sanitation.

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



- (a) information on areas within the county in which access to basic water and sanitation is inadequate;
  - (b) plans and measures for the development and continuous improvement of water, and sanitation services within the county;
  - (c) an investment programme and a timeframe for the development, expansion and improvement of water and sanitation services in the county;
  - (d) institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
  - (e) measures to facilitate the provision of water and sanitation services by private sector water service providers and community water service providers; and
  - (f) criteria and procedures for the provision by the county government of financial, technical and other assistance to county owned water utility companies and community water service providers.
- (4) The strategy shall be published in the *Kenya Gazette* Notice after approval by the County Executive Committee upon approval by the County Assembly.
- (5) Every county public officer and every county organ shall give effect to the gazetted county water and sanitation services strategy in the discharge of his, her or its duties under this Act.

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

### **PART III—ESTABLISHMENT AND OPERATION OF COUNTY WATER SERVICES PROVIDERS**

#### **Establishment of county water and sanitation services provider**

9. (1) There is established two County Water and sanitation Service providers to provide water and sanitation services to the rural and Urban areas respectively.

(2) The County water and sanitation service providers under subsection (1) are established as limited liability companies through incorporation under the Companies Act 2015 with the county government holding the entire shares.

(3) A county water and sanitation services provider established under this section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—



- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The County Executive Committee Member shall, in consultation with the regulatory body, assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government and which supply area shall ensure that the water services provider is commercially viable.

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

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

(7) Where the assets for the provision of water services in the supply area belong to a community water services provider, the county water services provider may, enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of which may provide that the community water services provider continues to provide water services as an agent of the county water services provider, and that the community water services provider may purchase water in bulk from the county water services provider.

#### **Functions of the county water and sanitation services providers**

10. (1) A county water and sanitation services provider established under this Act shall—

- (a) provide and manage water and sanitation services alongside other actors in the County;
- (b) manage and maintain County water and sanitation services, infrastructure, including water works and public works;

- (c) maintain adequate water supply system for domestic, industrial, livestock and agricultural purposes;
- (d) manage works for water conservation;
- (e) promote and manage water recycling systems;
- (f) promote efficient water use and management for sustainable development;
- (g) identify, initiate and promote water conservation systems, strategies and programs;
- (h) maintain database related to water and sanitation services;
- (i) disseminate information related to water and sanitation services;
- (j) maintain collaboration and cooperation with other government agencies, development partners, stakeholders, non-governmental organizations and other county governments in carrying out its functions.

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

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

#### **Governance of water and sanitation service providers**

11. The Urban Water and Sanitation Service Provider shall have a board of directors comprising not more than nine (9) members and the Rural Water Service Provider shall have a board of directors comprising not more than seven (7) members which shall guide and direct the performance of its functions.

#### **Composition of Board of Directors**

12. (1) The Board of Directors for the County Water Service Providers shall comprise of —

- (a) a non-executive Chairperson, appointed by the Governor;
- (b) the Chief Officer responsible for Water Services;
- (c) the Chief Officer Responsible for County Treasury;
- (d) a representative of the Lake Victoria Water Works Agency;



- (e) a person representing the learning institutions or key consumer institutions within the area of service for the water service provider only;
- (f) a person representing business and manufacturing community in the County, for the Urban Water and Sanitation Service provider only;
- (g) a person representing professionals in the County for the Urban Water and Sanitation Service provider only;
- (h) a person representing resident water user organizations;
- (i) a representative of the water catchment area; and
- (j) the chief executive officer who shall be an *ex-officio* member.

(2) The members of the Board under subsection (1), (e) (f), (g), (h), (i) shall be competitively recruited and shall be appointed by the County Executive Committee Member in accordance to the procedure set out in the First schedule and with consideration to regional balance.

(3) In making appointments for the Board of directors, consideration shall be made to the one third gender rule, persons with disabilities' and the youth,

(4) The term of the Board of the county water and sanitation services providers shall be subjected to annual performance review term of three years whose term shall not be affected by the expiry of the term of office of the County Government and which term is renewable only once.

(5) The appointments for the board of directors under subsection (1) shall be by Gazette Notice.

#### **Qualifications for appointment as chairperson or member of the board of directors**

**13.** A person shall qualify for appointment as Chairperson or member if that person—

- (a) holds degree from a university recognized in Kenya in any of the following fields finance, law, business administration engineering, bachelor of arts in education, human resource or information technology;
- (b) has a minimum of five years' experience in the core profession; and
- (c) meets the requirements of Chapter Six of the Constitution of Kenya, 2010.



**Company Secretary**

14. The Board of Directors shall have a Company Secretary who shall be an employee of the county water service provider appointed in line with the provisions of the memorandum and Articles of Association of the county water service provider.

**Functions of the Board**

15. (1) The functions of the Board shall be to—
- (a) ensure proper and efficient exercise of the powers and performance of the functions of the company;
  - (b) advise the management of the company generally on the exercise of the powers and the performance of the functions of the company;
  - (c) approve the estimates of the revenue and expenditure of the company;
  - (d) administer the assets, liabilities and funds of the company in such a manner and for such purposes as will promote the best interests of the company in accordance with this Act;
  - (e) receive, on behalf of the company, gifts, donations, grants or other money and to make legitimate disbursements therefrom;
  - (f) promote the general welfare of the staff of the company;
  - (g) have power to enter into association with other institutions dealing with water and sanitation matters, institutions of higher learning and research organizations as the Board may consider desirable or appropriate within or outside Kakamega County in furtherance of the purposes for which the Board is established;
  - (h) make rules and regulations for the proper and efficient management of the Company which rules and regulations shall be issued by the Chief Executive Officer on behalf of the Board and shall not be published in the *Gazette* but shall be brought to the attention of all those affected or governed by them;
  - (i) monitor and evaluate the state of water and sanitation systems in the County;
  - (j) liaise with the county department of water services in all matters relating to water and sewerage services; and
  - (k) perform such other functions as the Board of Directors may deem necessary for the proper discharge of its mandate under this Act.

(2) The Board shall be responsible to the Executive Committee Member for water services.

**Vacancy in the office of Board of Directors**

16. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (a) resigns by notice in writing addressed to the appointing authority;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) if chairperson is absent without the permission of the Executive Committee Member or if member is absent without the permission of the chairperson for three consecutive meetings;
- (f) fails to meet the requirements of chapter six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period of six months or more;
- (h) dies;
- (i) is removed from the office pursuant to Section 185 of the Companies Act 2015, or by special resolution by the company in General Meeting;
- (j) ceases to be a director by virtue of Section 183 and 186 of the Companies Act 2015;
- (k) ceases to be an officer of the County Government or is transferred or redeployed;
- (l) becomes prohibited from being a director by reason of any order under section 189 of the Act;
- (m) becomes of unsound mind;
- (n) fails without any reasonable cause and without consent of the board to attend three (3) consecutive meetings of the Board and the Board resolves that, the reason of such failure he shall cease to be a director;
- (o) has personal ties and transacts with the company;



- (p) breaches the Signed Code of Ethics and Conduct;
- (q) ceases to be a representative of the stake holder's body entity that has appointed him or her;
- (r) is charged with an offence and proved guilty under the Anti-Corruption and Economic Crimes Act or any other law;
- (s) contests for a political seat/position as per the Elections Act, 2011; or
- (t) becomes a Director in any other water sector institution.

(2) Where the office of chairperson or member of the Board becomes vacant, the Governor in the case of Chairperson or the Executive Committee Member in the case of member may, subject to the provisions of this Act on appointment procedures of the directors, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapters 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(4) Where a person who has vacated office under subsection (3) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of chairperson or member as the case may be.

#### **Remuneration for the Board**

17. The Chairperson and Members of the Board shall be paid such allowances as approved by the board in line with the Water Services Regulatory Board Corporate Governance Guidelines.

#### **Meetings and Procedure of the Board**

18. The Second Schedule shall apply in relation to the meetings and procedures of the Board. Meetings and Procedure of the Boards for County Water Service Providers.

#### **Chief Executive Officer of county water services providers**

19. (1) A county water services provider shall employ a chief executive officer who, shall be the Managing Director.

(2) The terms of appointment and service of the Chief Executive Officer shall be set out in the instrument of appointment and shall be in accordance to the provisions of the memorandum and articles of association of the company and in line with the Regulatory Board's corporate governance guidelines.



(3) The chief executive officer shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the county water services provider.

#### **Qualifications for appointment of Chief Executive Officer**

20. No person shall be appointed or hold office as a Chief Executive Officer unless such a person has—

- (a) a Master's degree in Engineering, Finance, Economics, business Administration, Human Resource Management or Law;
- (b) a minimum of seven years' experience in Management and/or service industry;
- (c) good standing with his professional body; and
- (d) meets the requirements of chapter six of the Constitution.

#### **Vacation of the Office of the Chief Executive officer**

21. The Chief Executive Officer may resign from office in line with the provisions of the memorandum and articles of association of the company.

#### **Other staff of a water service provider**

22. (1) A county water services provider may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve.

(2) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.

(3) This clause shall give effect to the National Technical Competence and Staff Efficiency Standards for staff of the county water service providers.

#### **Power to issue directions and remove Board**

23. (1) The County Executive Committee member may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the County Executive Committee member may, if at any time it appears to him or her that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of the chairperson or members and dissolve the Board and may constitute an interim Board for a period not exceeding six months as he or she shall, in consultation with the Executive Committee determine.

#### **Protection from personal liability**

24. 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 Companies, unless such expenses are recovered by him or her in such suit or prosecution.

#### **Liability for damages**

25. The provisions of Section 17 shall not relieve the Companies 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.

#### **Partnerships**

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

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

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



## PART IV—FINANCIAL PROVISIONS RELATING TO THE COMPANIES

### Funds

27. The funds of the Companies shall consist of—

- (a) monies appropriated by the Assembly for the purposes of the Companies;
- (b) fees and charges and penalties for services rendered by the Companies;
- (c) monies borrowed from commercial and financial institutions;
- (d) such monies as may be lawfully earned from income generating activities; and
- (e) monies granted or donated to the Companies.

### Support to the underserved areas

28. (1) The County Executive Committee Member may recommend provision of government grants to the established companies or community water schemes for support of the underserved areas.

(2) Such grants will form part of the funds of the respective company to be specially allocated to the specific underserved area.

### Financial year

29. The financial year of the Companies shall be the period of twelve months ending on the thirtieth June of each year.

### Annual estimates

30. (1) Before the commencement of each financial year, the Board of Management shall cause to be prepared estimates of the revenue and expenditure of the Companies for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Companies for the financial year concerned and in particular, shall provide for—

- (a) the operations of the Company;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Companies;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Companies;
- (d) the maintenance of the assets of the Companies;

- (e) the funding of operations, training, research and development activities of the Companies; and
- (f) the creation of such reserves 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 Board of Directors, may deem fit.

(3) The annual estimates shall be approved by the Board of Directors for the Companies and forwarded to the Executive Committee Member, before the commencement of the financial year to which they relate, for noting.

(4) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal and or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure and or facilities and or acquiring equipment and other assets for the provision of water services.

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

#### **Accounts and Audits**

**31.** (1) The Board of Directors shall cause to be kept all proper books and records of account of income, expenditure, assets and liabilities of the Company.

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

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

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution and applicable national and county government legislation.

#### **Annual Reports**

**32.** In compliance with the provisions of sections 184 and 185 of the Public Finance Management Act, 2012, a Chief Executive Officer of a



county water service provider shall prepare annual reports and submit to the board of directors.

## **PART V—COMMERCIAL VIABILITY AND WATER SERVICES DELIVERY**

### **Supply of water**

**33.** The county government shall progressively ensure that—

- (a) every person has access to safe and clean water for domestic use within reasonable distance;
- (b) there is accessible water for agricultural, livestock and industrial use; and
- (c) there is equitable distribution of water between consumers in urban and rural areas.

### **Water and Sanitation Services to be licensed**

**34.** A County Water Service Provider shall be licensed in line with the Water Act, 2016.

### **Water tariffs and charges**

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

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

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

(4) A water services provider which provides desludging and or exhauster services may impose a charge for treating the sludge and or wastewater.

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

(6) Notwithstanding the foregoing provisions, a water service provider shall impose fees, as per the tariff for default or late payment of water bills.

**Ring fencing of revenues**

36. (1) All funds of a county water services provider and all revenues arising from provision of water services by a county water services provider shall not form part of the general revenues of the county government but shall be retained by the water services provider for its purposes.

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

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

**Customer service**

37. (1) A water services provider shall at all times maintain a customer relations system including a feedback and grievance resolution system.

(2) A water services provider shall formulate and regularly review a service delivery charter, including implementation mechanisms.

**Interruption of service**

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

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

(3) Where an interruption in services extends for a period longer than 14 days, the water services provider shall take remedial measures to the extent practicable to provide consumers with alternative means.

(4) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works, the contractor shall repair the damaged pipes or infrastructure with such time as the Chief Executive Officer stipulates and, pending the restoration of water supply, the



contractor shall provide an alternative water supply to the affected consumers.

#### **Development of water works**

39. (1) The county government may for the purpose of carrying out its functions, erect or develop water works and public works on a public or private property.

(2) Notwithstanding the provisions of subsection (1), the county government may acquire private land or land from the relevant government entity in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3) The county government shall identify and establish specific areas on any road where public works under this Act may be carried out.

#### **Water Schemes**

40. (1) The county government or the community may initiate a water scheme to provide services under this Act for public benefit.

(2) A water scheme initiated by the county government shall be in line with the service provision agreement and shall fall within a service provision area of either the urban or rural company as will be determined by the County Executive Committee member, and, shall take precedence over any private or community scheme.

#### **Register of water service providers**

41. (1) The Directorate shall maintain a register of all water service providers operating within the area of jurisdiction of the county.

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

(a) its area of supply;

(b) Water production per day as per WRA permit;

(c) the number and location of customers served;

(d) an inventory of the facilities and infrastructure available to it for the provision of water services;

(e) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;

(f) the tariff charged;

- (g) Water Quality Status;
- (h) particulars of liabilities;
- (i) its license status with the Regulatory Board and, if licensed, a copy of the licence;
- (j) plans and programmes for the improvement of water services it provided; and
- (k) such other information as the Executive Committee Member may by regulations prescribe.

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

(4) The register shall be open to inspection by members of the public during normal working hours.

#### **Audit of Water Service Providers**

42. (1) The Executive Committee Member shall audit and assess the number of persons providing water services in the County whether the persons are authorized or not.

(2) The data and information collected under this section shall be used on policy directive on management of water services in the County.

#### **Monitoring and Evaluation of Water Service Providers**

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

(2) The County Water Service Provider(s) shall provide the directorate on a quarterly basis an operations report in the prescribed format.

(3) The County Executive Committee Member shall, on the basis of recommendations of the monitoring and evaluation report and operations reports of WSPs take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sanitation services provided by water services providers operating in the county.



## **PART VI—ADMINISTRATION OF WATER SUPPLY AND INFRASTRUCTURE SERVICES**

### **Raw water abstraction permits and access rights**

44. (1) The County Government shall ensure the availability and development of sources of water for abstraction as necessary to enable the water services provider supply adequate quantities and quality of water to its consumers.

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

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

### **Septic Tank Sludge Management**

45. (1) The County Executive Committee Member in consultation with the Chief Executive Officer shall, as soon as reasonably practicable following coming into effect of the Act, make regulations governing the sustainable management of septic tank sludge, including the licensing of exhaustor service providers, and disposal of sludge after collection from septic tanks by exhaustor service providers.

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

### **Easements and access rights**

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

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

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

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

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

#### **Operation of community water projects**

47. (1) No community water operator shall supply water for domestic use without being registered with the Directorate and obtaining a no objection from the directorate.

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

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

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

#### **Construction of boreholes within supply area**

48. (1) Subject to National Legislation every application to the water resources regulatory authority for the construction of a borehole for domestic water consumption within the area of supply of a water services provider shall be submitted for a "no-objection" to the water services provider within whose area of supply the borehole is to be constructed.

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



(3) The water services provider shall maintain an inventory of boreholes constructed within its area of supply and as soon as it is able to provide water services to the owner of the borehole it shall require the owner of the borehole to discontinue the use of the borehole and take a supply of water from the water services provider.

(4) Where the water services provider wishes to take water from the borehole for supply to its customers it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider's customers shall be submitted to the Director for determination and if any party is dissatisfied with the decision of the Director, may appeal to the Water Tribunal established under the Water Act.

#### **Regulation of water vending kiosks**

49. (1) Chief Executive Officer shall, within six months of this law coming into effect, make regulations on water vending kiosks.

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

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

### **PART VII—APPROVALS OF CONSTRUCTION WORKS AFFECTING WATER WORKS INFRASTRUCTURE**

#### **Approval of construction works**

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

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

Thousand shillings or imprisonment for a term not exceeding six months or both.

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works, the person responsible for the construction works shall, in addition to any other prescribed penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defense to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.

(4) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

### **Certification of property development works connecting to water mains**

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

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

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

## **PART VIII—WATER AND RIPARIAN AREA CONSERVATION**

### **Water Conservation Areas**

52. (1) The Department for the time being responsible for water services shall in consultation with the National Land Commission and other government agencies declare by notice in the *Gazette* any area to be a water conservation area for the purpose of conserving water.



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

### **Conservation of water catchment areas**

53. The Department shall—

- (a) through the Intergovernmental Relations Act, 2012, the County Governments Act and any other written law collaborate with other County Governments in conservation and protection of water sources and catchment areas of strategic importance which are located outside the County;
- (b) support financing of water conservation and catchment protection;
- (c) support and enforce reserve flow maintenance at all times; in collaboration with other agencies develop policy and strategy on water storage at household and farm level and ensure their implementation; and
- (d) in collaboration with water resource users associations participate in development and monitor implementation of sub catchment management plans.

### **Conservation guidelines**

54. The Executive Committee Member shall in consultation with national and county agencies prescribe guidelines and standards to be adopted for water conservation.

### **Demarcation of riparian land**

55. The Department shall in consultation with national and county agencies and other stakeholders demarcate riparian land.

### **Prohibited activities on riparian**

56. (1) A person shall not carry out any of the following activities on riparian land—

- (a) tillage or cultivation;
- (b) clearing of indigenous trees or vegetation;
- (c) building of structures;
- (d) disposal of any form of waste within the riparian land;
- (e) excavation of soil or development of quarries;
- (f) planting of exotic species that may have adverse effect to the water resource; or

(g) any other activity that in the opinion of the Department may degrade the water resource.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or to both.

## **PART IX—STORM WATER MANAGEMENT**

### **Water and Sewerage works conditions**

57. The Department shall in collaboration with relevant County or national government departments and local residents promote sound water and land use practices.

### **Storm Water Management Plan**

58. (1) There shall be in each town or urban area a watershed storm water management plan developed by the department in accordance with the prescribed standards.

(2) The department shall ensure that a storm water management plan is developed and implemented through a consultative process.

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

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

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

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

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

- (a) if a corporate body be liable on conviction to a fine not exceeding five hundred thousand shillings; or
- (b) if an individual be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or to both.



### **Reduction of Run-off Water**

59. The Department shall develop policies to encourage owners of houses, property or buildings to—

- (a) install rain barrels with sufficient capacity to store water from the building;
- (b) where applicable not permit storm water to become runoff; and
- (c) re-use or recycle storm water collected for other purposes in the premises.

### **Riparian Buffers**

60. (1) The Department in collaboration with other government agencies and local residents shall mobilize residents to develop or restore riparian buffers along rivers, water ways or any other water body.

(2) No person shall interfere with a restored riparian buffer in a way that exposes it to run off water.

(3) A person who contravenes the provisions of sub section (2) commits an offence and shall—

- (a) if a corporate body be liable on conviction to a fine not exceeding five hundred thousand shillings; and
- (b) if an individual be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

### **Water and Sewerage Master Plan**

61. The Company shall either directly or through public private partnership—

- (a) provide necessary sewerage facilities and services; and
- (b) construct, operate and maintain extensive system of sewer and treatment facilities to meet applicable discharge requirements.

### **Provision of Sewerage Services**

62. A person or entity shall when disposing final effluent comply with the guidelines prescribed by the National Environment Management Authority and Water Resources Authority.

### **Compliance with Effluent Standards**

63. (1) A person shall not discharge effluent unless in accordance with the prescribed guidelines and standards by the Department.

(2) A person who contravenes subsection (1) commits an offence and shall—

- (a) if a corporate body be liable on conviction to a fine not exceeding five hundred thousand shillings; and
- (b) if an individual be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months or both.

#### **Discharge Effluent**

64. (1) The Executive Committee Member shall constitute and convene the water and sewerage services sector wide forum.

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

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

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

#### **Sector wide forum**

65. (1) The County Water Service providers, which shall be limited liability companies shall be the successor to Kakamega County Urban Water and Sanitation Corporation and the Kakamega County Rural Water and Sanitation Corporation in respect of all rights, duties, obligations, assets and liabilities existing at the date of commencement of this Act.

(2) All such rights, duties, obligations, assets and liabilities shall be automatically and fully transferred to the companies and any reference to the county government or the Executive Committee Member or the chief officer responsible for water services or the Board or the Chief Executive Officer in relation to Kakamega County Urban Water and Sanitation Corporation and the Kakamega County Rural Water and Sanitation Corporation in any written law or in any contract or document shall for all purposes be deemed to reference to the Companies under this Act.



**PART X—TRANSITIONAL PROVISIONS****Succession of Corporations by the companies**

66. Any person who at the commencement of this Act is a member of staff of Kakamega County Urban Water and Sanitation Corporation and the Kakamega County Rural Water and Sanitation Corporation shall on commencement of this Act become a member of staff of the respective company on the same or improved terms and conditions of service as may be specified by the Board of Directors in consultation with the executive committee member:

Provided that —

- (a) any such member of staff may retire on the basis of abolition of office in accordance with this Act;
- (b) any such member of staff may be deployed in the county public service with mutual consent of any such member and the County Government.

**Transition of Corporations' staff**

67. Any person who at the commencement of this Act is a chairperson or member of the Board of Directors of Kakamega County Urban Water and Sanitation Corporation and the Kakamega County Rural Water and Sanitation Corporation shall on commencement of this Act shall continue in office until his or her current term of appointment expires.

**PART XI—OFFENCES****Impersonation of staff of the water services providers**

68. Any person who impersonates an employee of a water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of not less than six months imprisonment, or a fine not less than two hundred and fifty Thousand shillings, or both.

**Vandalism of Water and Sewerage Services Infrastructure**

69. (1) Any person who willfully vandalizes, damages, or destroys infrastructure or a facility of a water and sewerage services provider shall be guilty of an offence and, on conviction, shall be liable to a fine not exceeding Five Hundred Thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(2) Upon conviction for a second or subsequent offence involving the willful destruction or vandalism of infrastructure or facilities belonging to a water services provider the offender shall be liable to a fine not exceeding One million shillings or to imprisonment for a term not exceeding three years, or to both.

**Illegal connections**

70. (1) Any person who illegally connects to, diverts water connection, bypasses the installed water meter and utilizes for any purpose, water and or sewerage water services provided by a water services provider shall be guilty of an offence—

- (a) any person who illegally connects to the main line of a water service provider and utilizes for any purpose, water and or sewerage water services provided by a water services provider shall be guilty of an offence;
- (b) any person who connects and uses water before due application for water and contractual procedure that ends with issuance and installation of a water meter and creation of an account is guilty of an offence;
- (c) any person who gives false information of consumer category or any other information falsification during application procedure is guilty of an offence;
- (d) any person who reconnects water after disconnection by the water service providers for default in payment or late payments is guilty of an offence;
- (e) any person who tampers with any meter or installed water and sewerage infrastructure.

(2) Upon conviction of the offenses under section 61 (1), the offender shall be liable to a fine not exceeding Kenya Shillings Five Hundred thousand (KSh. 500,000) or to imprisonment for a term not exceeding two years, or both.

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

(4) Nothing contained in this section shall prevent a water or sewerage services provider from imposing a penalty for any illegal or unauthorized water or sewerage connections in line with the company policy and procedures.

**Contamination of water**

71. (1) Any person who willfully contaminates or pollutes water which is used or intended to be used for domestic premises or domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty of an offence and upon conviction shall be



liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or both.

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

## PART XII—ENFORCEMENT

### Inspectorate unit

72. A Water Services Provider shall establish and maintain an inspectorate service unit with adequate resources and staff.

### Power of entry

73. (1) An Inspector employed by the water services provider may enter any premises to which it provides water and or sewerage services in order to inspect and monitor—

- (a) the distribution system;
- (b) the water metre(s);
- (c) water storage systems;
- (d) the sewerage system;
- (e) suspected illegal connections;
- (f) such other elements of the water and sewerage services as the County Executive Committee Member, may, through regulations, authorize.

(2) An inspection may only be undertaken between the hours of 8.00 a.m. and 6.00 p.m. except in an emergency or when there is a suspected illegal connection or water theft beyond the stipulated hours.

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

(4) For the purposes of ensuring compliance or implementation of the Act, an authorized officer, upon identification, may at any reasonable time, enter any place in which any function or prohibited activity related to this Act is carried out.

(5) An authorized officer may undertake arrest of any person or agent of a person found at a place where a prohibited activity under this Act is being undertaken.

### **Obstruction of Authorized Officer**

74. Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months.

## **PART XIII—MISCELLANEOUS PROVISIONS**

### **Water conflict resolution**

75. The Executive Committee Member shall put in place measures and programs to ensure resolution of community water conflicts.

### **Regulations**

76. (1) The Executive Committee Member may make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of sub section (1), the regulations may—

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sanitation systems and standards;
- (c) prescribe fees;
- (d) prescribe areas declared as water protected areas;
- (e) prescribe guidelines for sustainable management of community-based water schemes;
- (f) prescribe the membership of the water sector stakeholders.
- (g) formation of water appointment of directors' committees;
- (h) prescribe how a water service provider may take over the functions and area of service of another water service provider,
- (i) transfer of assets and liabilities and settlement of disputes;
- (j) prescribe the procedure of voluntary transfer of functions and area of operation from one water service provider to another;
- (k) prescribe delineation of the area of service for the rural and Urban water and sanitation service providers.

### **Repeal**

77. The Kakamega County Water Act, 2019, and the Kakamega County Rural Water and Sanitation Corporation Act, 2020 are hereby repealed.



**FIRST SCHEDULE**

(s.12 (2))

**PROVISIONS AS TO THE PROCEDURE FOR APPOINTMENT OF BOARD OF DIRECTORS FOR COUNTY WATER SERVICE PROVIDERS****Establishment of a select committee**

1. (1) There shall be a select committee established during the Annual Consumer summit for the respective Water Service providers.

(2) The select committee referred to shall comprise of five members appointed by the stakeholders as follows—

- (a) Chairperson representing the professionals’;
- (b) one person appointed by the executive committee member to represent the County Public Service Board;
- (c) one person appointed by the Executive Committee member to represent the department;
- (d) one person to represent the national chamber of Commerce and Industry Kakamega Chapter;
- (e) one representative from the resident Water users’ associations or organizations;

**Vetting of Applications**

2. The Select committee shall undertake vetting of the applications in line with the provisions of the Water Services Regulatory Board Corporate Governance Guideline.

**Appointment of the Directors**

3. The Select committee shall forward to the Executive Committee Member the list of the successfully vetted persons for appointment as Directors.

**SECOND SCHEDULE**

(s.17)

**PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD OF DIRECTORS****Meetings**

1. The Board shall meet for the dispatch of business at least four times a year and not more than six times a year provided that the Board shall meet not less than four times in any financial year.

**Chairperson and Committees of the Board**

2. The Board shall have the Audit and Risk assurance committee and two other Board Committees constituted by the Chairperson in consultation with the Chief Executive Officer

**Appointment of alternate directors**

3. The Directors representing County offices will appoint alternate directors in writing who shall at all times attend to Board meetings and Board activities in the absence of the directors.

**Code of ethics and conduct for Board members**

4. The Board members shall take and prescribe to the code of ethics and conduct for Board members.

**Notice for Board meetings**

5. (1) Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least five days beforehand to every director at such address in Kenya as he/she shall have notified to the Secretariat from time to time. Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

(2) Board notices shall detail the agenda with accompanying Board papers.

**Special Board meetings**

6. The Board may at any time hold a special meeting of the Board by written notice of not less than twenty-four hours to all directors but such meetings shall not exceed four meetings in a financial year.

**Presiding of Board meetings**

7. The Chairperson shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, a Director appointed by the Chairperson shall chair the meeting.



**Quorum for Board meetings**

8. The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.

**Voting**

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

**Disclosure of Conflict of interest**

10. The Board Secretary shall maintain a conflict of interest register. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter. A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

**Board minutes**

11. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept by the Board Secretary. Minutes shall be signed by the Chief Executive Officer before circulation and confirmed by the chairperson or the person presiding at the meeting.

**Recording of opinion of the Chief Executive Officer**

12. The Chief Executive Officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the Chief Executive Officer's or officer's opinion, is contrary to his advice or contrary to law.

**Other procedures**

13. Subject to the provisions of this Schedule, the Board shall in a Board Charter which meets the principles of corporate governance determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

**The common seal**

14. (1) The affixing of the common seal of the company shall be authenticated by the signatures of the Chairperson, Chief Executive Officer

or any other director authorized generally or specially by the Board to act for the purpose, and witnessed by the Board Secretary.

(2) A record of the usage of the Companies seal will be kept by the Board Secretary.

**Contracts and instruments**

15. 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 [company] by any person generally or specially authorized by it for that purpose.

**Proof of documents**

16. Any document purporting to be a document duly executed or issued under the seal of the company or on behalf of the company shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

11. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept by the Board Secretary. Minutes shall be signed by the Chief Executive Officer before circulation and confirmed by the chairperson or the person presiding at the meeting.

12. The Chief Executive Officer or an officer authorized by him to do so shall have the right to require the presence of a committee member at that behalf present at a meeting of the Board. A committee member shall have the right to require the presence of a committee member at the minutes if the Board or the committee as the case may be passes a resolution which in the Chief Executive Officer's or officer's opinion is contrary to his advice or contrary to law.

13. Subject to the provisions of this 21, the Board shall be a Board Chamber which meets the principles of corporate governance determine its own procedures and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

14. (1) The affixing of the company seal of the company shall be authorized by the signature of the Chief Executive Officer.