

THE KENYA CITIZENS AND FOREIGN NATIONALS MANAGEMENT SERVICE ACT

No. 31 of 2011

Date of Assent: 30th September, 2011
Date of Commencement: 4th October, 2011

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FIRST SCHEDULE — ACTS TO BE ADMINISTERED BY THE SERVICE
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An Act of Parliament to establish the Kenya Citizens and Foreign Nationals Management Service; to provide for the creation and maintenance of a national population register and the administration of the laws relating to births and deaths, identification and registration of citizens, immigration and refugees; administration of the laws relating to marriages and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I-PRELIMINARY

Short title.

1. This Act may be cited as the Kenya Citizens and Foreign Nationals Management Service Act, 2011.

Interpretation.

2. (1) In this Act, unless the context otherwise requires-

"Board" means the Kenya Citizens and Foreign Nationals Management Service Board established under section 5;

"Cabinet Secretary" means the Cabinet Secretary responsible for citizens and foreign nationals management matters;

"Director" includes the Director-General and any of the persons appointed under section 16;

"Director-General" means the Director-General appointed under section 13;

"foreign national" has the meaning provided under the Kenya Citizenship and Immigration Act and includes asylum seekers and refugees as defined in the Refugee Act, 2006 No. 13 of 2006.;

"national population register" means a register developed under this Act for the purpose of capturing registration information on all Kenyans and Foreign Nationals resident in Kenya;

"Service" means the Kenya Citizens and Foreign Nationals Management Service established under section 3.

(2) Until after the first elections under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister"

PART II — THE KENYA CITIZENS AND FOREIGN NATIONALS MANAGEMENT SERVICE

Establishment and composition of the Service

3. (1) There is established the Kenya Citizens and Foreign Nationals Management Service which shall be a body corporate with perpetual succession and a common seal.

(2) The Service shall in its corporate name be capable of —

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing and lending money;

(d) charging fees for services rendered by it;

(e) entering into contracts; and

(f) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

(3) The headquarters of the Service shall be in the capital city, but the Service may establish branches at any place in Kenya to ensure reasonable access to its services.

Functions of the Service.

4. (1) The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws and any other matter relating to citizenship and immigration, births and deaths, marriages, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register.

(2) Notwithstanding the generality of sub-section (1), the service shall-

(a) in relation to the national population register and for the purpose of collecting and compiling information concerning the distribution and composition of the population in Kenya, the scope and direction of migration, labor resource utilization, and other connected purposes have the following functions-

(i) receiving, storing and updating information from primary registration agencies;

(ii) generating of appropriate unique identifier for individuals and groups in accordance with this Act;

(iii) subject to the Constitution and in consultation with other relevant institutions, regulating the sharing of information by the various registration agencies and other users;

(iv) implement the relevant policies and guidelines and provide the cabinet secretary with the necessary information to guide the formulation of new policies, review of existing policies and guidelines;

(v) in consultation with the Cabinet Secretary, coordinate and mobilize resources for the implementation of the relevant policies;

(vi) undertake the task of data collection and dissemination in a manner that ensures consistency and accuracy in accordance with set national standards and guidelines; and

(vii) facilitate access to information and data to national population registration information in accordance with this Act, any other relevant law or policy and the Constitution;

(b) administer the Acts of Parliament set out in the First Schedule and any other written law ;

(c) advise the Government on the matters provided for in this section;

(d) collaborate with other state agencies for effective discharge of its mandate; and

(e) perform such other functions as may be directed by the Cabinet Secretary.

Establishment of the Board.

5. (1) There shall be a Board of the Service which shall be the governing body of the Service.

(2) The Board shall consist of-

(a) the Chairperson to be appointed by the President on the recommendation of the Public Service Commission;

(b) the Principal Secretaries or their representatives appointed in writing in the Ministries for the time being responsible for matter relating to-

(i) Immigration and Population registration;

(ii) Foreign Affairs;

(iii) Internal security;

(c) the Director-General who shall be an ex officio member;

(d) the Secretary to the Board to be appointed by the Board who shall be an ex officio member; and

(e) five other persons with expertise or experience in matters relating to this Act who are not public officers, to be appointed by the Cabinet Secretary.

Provided that the Director-General and the Secretary to the Board shall be of the opposite gender and where majority of members under paragraph (b) are of one gender, the appointees under paragraph (e) shall be of the opposite gender.

Responsibilities of the Board.

6. (1) The Board shall be responsible, through Cabinet Secretary, to the people of Kenya for

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(a) formulation and review of the policies of the Service in accordance with constitutional values and principles including the principle on public participation;

(b) monitoring of the performance of the Service;

(c) appointment training, discipline and removal of members of staff of the Service;

(d) establishing departments within the Service and allocate responsibilities to such departments; and

(e) reviewing and recommending for review laws and regulations for the better management of the Act.

(2) The Board shall ensure that all its appointments conform to the values and principles of the Constitution including the principles of affirmative action for gender equality, regional balance and inclusion of the marginalized populations at all levels of employment in accordance with Articles 27, 54, 55, 56, 232 and other relevant provisions of the Constitution of Kenya.

Committees of the Board

7. (1) The Board shall establish a Citizenship Advisory Committee, a Permits Determination Committee and such other committees as it shall deem necessary for the efficient and expedient disposal of the business of the Board.

(2) A committee of the Board shall have authority to deliberate on and make resolutions or recommendations over such matter as shall be referred to it by the Board.

(3) A committee of the Board shall be chaired by a member appointed by the Board and in the absence of the member, the members of committee present shall appoint one member from among themselves to chair the meeting.

(4) The quorum for each meeting of a committee shall be two thirds of its membership inclusive of its chair.

(5) No resolution of a committee of the Board shall become a decision of the Board until it has been tabled before the Board and adopted by the Board.

Tenure of office of the chairperson. and members of the Board.

8. (1) The chairperson of the Board and every member of the Board shall hold office for a single term of five years but for transitional purposes, the first chairperson shall hold office for a term of six years.

(2) The term of office of the chairperson and members of the Board as first constituted and at every reappointment or change in membership shall commence on the date of publication in the Kenya Gazette.

(3) The chairperson or a member of the Board may resign his office by written notification under his hand addressed to the President in the case of the chairperson and to the Cabinet Secretary in the case of a member of the Board.

Termination of appointment of chairperson, and member of the Board.

9. The appointment of the chairperson or of a member may be terminated by the appointing authority on any of the following grounds –

(a) for his inability to perform the functions of his office by reason of medical infirmity

(b) if he or she is declared or becomes bankrupt or insolvent or if they have been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) violation of Chapter six of the Constitution

(d) if he or she has been convicted for any offence related to corruption including money laundering

(e) if, without reasonable cause to the satisfaction of the Cabinet Secretary, he or she is absent from the minimum number of meetings of the Board in any financial year as provided for in the Second Schedule;

(f) if in any particular case, he fails to comply with the provisions of section 11;

(g) for such other sufficient cause as the appointing authority may, by notice in the Gazette, specify.

meetings of the Board.

10. (1) The provisions of the Second Schedule shall apply to the meetings of the Board and other matters provided for in that Schedule.

(2) Five members of the Board shall constitute a quorum for the transaction of any business of the Board.

(3) The Board may co-opt any person to participate in such of its deliberations as it shall deem necessary, but a person so co-opted shall have no right to vote.

(4) The Cabinet Secretary may, after consultation with the Board, amend the Second Schedule.

Confidentiality.

11. (1) No member of Board, Committee, employee or agent of the Service shall disclose information acquired under this Act except-

(a) for the purpose of an investigation of a cognizable offence;

(b) in the course of an inquiry into matters, of national security;

(c) in the course of his duties subject to the consent of the Director-General being sought and obtained by the officer; or

(d) under such other lawful circumstances as the Director-General shall either generally or with regard to any particular circumstances authorize.

Provided that justification for such authorization shall be put in writing.

(2) Notwithstanding sub-section (1) the service may disclose information that it is holding pursuant to Article 35 of the Constitution and subject to Article 31 of the Constitution.

(3) No person who receives information in contravention of subsection (1) shall disclose or publish the information.

(4) A person who contravenes any provision of this section commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding four years or both such fine and imprisonment.

Disclosure of interest by the chairperson, and member.

12. (1) No person sitting on the Board shall be allowed to transact any commercial business with the Service.

(2) The chairperson or member of the Board who has any other direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as practicable after the relevant facts concerning the matter have come to his knowledge disclose the nature of his interest to the Board.

(3) A disclosure of interest made by the chairperson or member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not unless the Board otherwise determines in respect of that matter –

(a) be present during any deliberations on the matter by the Board; or

(b) take part in the decision of the Board on the matter.

(4) For the purpose of the Board making a determination under subsection (2) in relation to the chairperson or member who has made a disclosure under subsection (1), such member shall not –

(a) be present during the deliberations of the Board nor take part in the making of such determination by the Board; or

(b) influence any other member in the way they will take part in the making of such determination.

Appointment of the Director-General.

13. (1) There shall be a Director-General of the service who shall be appointed by the Cabinet Secretary upon the recommendation of the Board after a competitive recruitment process, on such terms and conditions as are specified in the instrument of appointment.

(2) The Director-General shall be the Chief Executive Officer of the Service and, subject to the general supervision and control of the Board, shall be responsible for-

- (a) the day-to-day operations of the Service;
 - (b) the management of funds, property and affairs of the Service; and
 - (c) the administration, organization and on delegated authority of the Public Service Commission, the control of the staff of the Service.
- (3) The Director-General shall hold office for a single term of six years.
- (4) To qualify for appointment as a Director-General, a person shall possess a degree in either law, economics, immigration matters, refugee affairs, administration, management, population studies or demography and such other additional qualifications as the Board may prescribe.

Removal of the Director-General from office.

14. The Cabinet Secretary may subject to recommendations by the Board terminate the appointment of the Director-General for —

- (a) misconduct in contravention of the code of conduct and discipline as developed by the Service;
- (b) the Director-General's inability to perform the functions of his office for medical reasons;
- (c) violation of Chapter six of the Constitution;
- (d) if he or she is declared or becomes bankrupt or insolvent or if they have been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) if he or she has been convicted for any offence related to corruption including money laundering;
- (e) if, without reasonable cause to the satisfaction of the Cabinet Secretary, he or she is absent from the minimum number of meetings of the Board in any financial year as provided for in the Second Schedule;
- (f) if in any particular case, he fails to comply with the provisions of section 12; or
- (g) for such other sufficient and lawful cause.

Delegation of powers of Director-General.

15. The Director-General may, with the approval of the Board, delegate in writing, any of his powers or functions under the Act or any other written law to a Director, an immigration officer, a registrar, a registration officer or any other officer or member of staff on the terms specified in the instrument of delegation.

Appointment of directors and other members of staff.

16. (1) The Service may upon such terms and conditions as may authorized by the public service commission appoint such Directors and other members of staff as may be necessary for carrying out its functions.

(2) Any reference to a Director or Head of a department of the service by whatever reference adopted and in relation to the laws administered by the Service shall be construed as reference to the Director-General

(3) Any reference to a department under the Acts set out in the First Schedule shall be deemed to be reference to the Service.

Seal of the Service.

17. (1) The seal of the Service shall be authenticated by the signature of the Director-General and the Secretary to the Board.

(2) In the absence of the Director-General an officer designated by him or her or by the Board for the purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being performing the functions of the Secretary may authenticate the seal in his or her place..

(3) Every document purporting to be an instrument issued by the Service and to be sealed with the seal of the Service authenticated in the manner provided by subsection (1) or (2) shall be deemed to be such an instrument and shall unless the contrary is proved be deemed to have been so sealed and authenticated and shall be received in evidence accordingly.

Funds of the Service.

18. (1) The funds of the Service shall consist of –

(a) monies provided by Parliament through the national government ;

(b) appropriations in aid or such other moneys as may be authorized to accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;

(c) such grants, donations or endowments received by the Board on behalf of the Service; and

(d) funds that may be received by the Service from any other sources authorized by the law.

(2) The Service may in the discharge of its functions levy such fees and charges as may be prescribed from time to time and administer it in accordance with the authority granted by this Act or any other law.

Annual estimates.

19. (1) The Service shall, not later than four months before the end of a financial year, prepare an estimate of the income and expenditure of the Service for the next financial year. The financial year of the Service will be the same as the government's

(2) The annual estimates shall make provisions for all estimated expenditure of the Service for the financial year and in particular shall provide for-

(a) the payment of salaries, emoluments, benefits, allowances and other charges of the staff of the Service;

(b) the acquisition, construction and proper maintenance of the buildings and the grounds of the Service as may be approved by the national government;

(c) pension contributions, gratuities and other charges in respect of the staff of the Service in accordance with the relevant laws;

(d) the proper maintenance, repair and replacement of the equipment and other property of the Service; and

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of such other matter as the Service considers appropriate in line with the public financial management laws.

(3) The annual estimates shall be approved by the Board and shall be submitted to the Cabinet Secretary for final approval as provided by subsection (1) above before the commencement of the financial year to which they relate.

(4) No expenditure shall be incurred for purposes of the Service except in accordance with the annual estimates approved under subsection (3) or except upon the authorization of the Cabinet Secretary but subject to the parliamentary approved budget allocations.

Financial year of the Service.

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

Accounts and records.

21. (1) The Service shall keep or cause to be kept proper books and records of its income, expenditure, assets and liabilities.

(2) The accounts of the Service shall be audited and reported upon in accordance with the Public Financial Management Laws

Review of Director's decisions.

22. (1) A person aggrieved by a decision of the Director made pursuant to any of the Acts specified in the First Schedule may apply to the Cabinet Secretary for review of the decision of the Director.

(2) The application under subsection (1) shall be in such manner as shall be prescribed.

Establishment of the Tribunal.

23. (1) There is established a tribunal to known as the Kenya Citizenship and Immigration Service Appeals Tribunal.

(2) The Tribunal shall consist of the following members appointed by the Cabinet Secretary-

(a) a chairperson who shall be a person qualified to be appointed a judge of the High Court;

(b) two persons qualified and experienced in matters relating to public administration, immigration or demography.

(3) The Tribunal shall have the same powers as a subordinate court of the first class.

(4) Any person aggrieved by a decision of the Board or Director under this Act may appeal to the Tribunal in accordance with subsection (5).

(5) The Chief Justice shall prescribe the manner of appeal and rules of procedure for the Tribunal.

(6) A person aggrieved by a decision of the Tribunal under this section may appeal to the High Court in such manner and time as may be prescribed under subsection (5).

Vesting of assets.

24. All assets whether movable or immovable registered in the name of or otherwise belonging to any of the departments referred to in the Acts of Parliament set out in the First Schedule or in Acts repealed by any of the Acts referred to in the First Schedule shall upon coming into effect of this Act vest in the Service.

Transition of staff.

25. (1) Until the Board is constituted and has competitively recruited for all the positions in accordance with this Act, the staff of any department or public officer employed by the government for the purposes of providing the services under the laws specified in the First Schedule immediately before the commencement of this Act, shall continue to provide such services in their previous positions on the previous terms and conditions of employment.

(2) Subject to subsection (3), the member of staff or public officer referred to in subsection (1) shall, upon constitution of the Board and competitive recruitment by the Board for all positions in accordance with this Act, be redeployed in the public service.

(3) Notwithstanding subsection (2), the Board shall, before employing a member of staff or public officer referred in subsection (1)-

(a) require such member of staff or public officer to make an application for employment to the Board; and

(b) using the criteria determined by the Board, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of the Service.

Regulations.

26. The Cabinet Secretary, in consultation with the Board, may make such regulations as shall be necessary for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

(s. 4 (2)(b))

The Citizenship and Immigration Act, 2011
The Births and Deaths Registration Act (Cap. 149)
The Registration of Persons Act (Cap. 107)
The Refugees Act, 2006 (No. 13 of 2006)
The Marriage Act (Cap 150)
The African Christian Marriage and Divorce Act (Cap. 151)
The Mohammedan Marriage and Divorce Registration Act (Cap. 155)
The Hindu Marriage and Divorce Act (Cap. 157)

SECOND SCHEDULE

(s. 10)

PROCEEDINGS OF MEETINGS OF THE BOARD

1. The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.
2. A meeting of the Board shall be held on such date and at such time as the Board shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.
4. Unless the majority of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
5. The Chairperson shall preside at every meeting of the Board at which he is present and in the absence of the chairperson at a meeting, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
6. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members.
7. No proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof
8. Unless otherwise provided by or under any law, all instruments made by and decisions of the Board shall be signified under the hand of the Chairperson and the Secretary.

9. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

10. Except as provided by this Schedule, the Board may regulate its own procedure.

11.(1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall% as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

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

(3)A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.