THE INDEPENDENT OFFICES (APPOINTMENT) BILL, 2011

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.
2—Interpretation.

PART II—ADMINISTRATION

3—Powers of independent office as a body corporate.
4—Qualification for appointment as independent office holder.
5—Procedure for appointment of holder of independent offices.
6—Vacancy.
7—Filling of vacancy.
8—Temporary vacancy.
9—Oath of office.

PART III—MISCELLANEOUS PROVISIONS

10—Annual report.
11—Transitional.
A Bill for
AN ACT of Parliament to provide the procedure for identification and recommendation for appointment of holders of independent offices, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Independent Offices (Appointment) Act, 2011.

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

“Auditor-General” means the Auditor-General appointed under Article 229 of the Constitution;

“Controller of Budget” means the Controller of Budget appointed under Article 228 of the Constitution;

“independent office” means the office of the Auditor-General or of the Controller of Budget, in accordance with Article 238 (3) of the Constitution.

PART II—ADMINISTRATION

3. (1) In addition to the powers of an independent office under Article 253 of the Constitution, an independent office shall have the power to —

(a) acquire, hold, charge and dispose of movable and immovable property; and

(b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may lawfully be done or performed by a body corporate.

(2) The headquarters of an independent office shall be in the capital city but the independent office may establish branches at any place in Kenya.

4. (1) A person shall be qualified for appointment as the Auditor-General or the Controller of Budget if such person—
(a) is a citizen of Kenya;

(b) holds the respective qualifications for the office specified in Article 228 or 229 of the Constitution;

(c) holds a degree in finance, accounting or economics from a university recognized in Kenya;

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment under subsection (1) if the person —

(a) is a member of Parliament;

(b) is a member of a county assembly;

(c) is a member of a local authority;

(d) has not met his tax obligations;

(e) has been removed from office for contravention of any law; or

(f) is an undischarged bankrupt.

5. (1) The President shall, within seven days of the commencement of this Act, or of the occurrence of a vacancy in an independent office, by notice in the Gazette, at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the independent offices and invite applications.

(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any —

(a) qualified person; or

(b) person, organization or group of persons proposing the nomination of any qualified person.

(3) The names of all applicants under subsection (2) shall be published in the Gazette
(4) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a committee comprising one representative each of the—

(a) Office of the President;

(b) Office of the Prime Minister;

(c) Ministry for the time being responsible for matters relating to finance;

(d) State Law Office; and

(e) Ministry for the time being responsible for matters relating to the public service,

for the purpose of considering the applications and selecting at least three persons qualified for appointment as Auditor-General or Controller of Budget, as the case may be.

(5) The Public Service Commission, shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the President for nomination.

(6) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate each for appointment as the Controller of Budget and the Auditor-General and forward the names to the National Assembly.

(7) The National Assembly shall, within fourteen days of receipt of the nominees under subsection (6), consider the nominations and may approve or reject the nominations.

(8) Where the National Assembly—

(a) approves the nominees, the Speaker shall, within three days of the approval, forward the names of the approved nominees to the President for appointment;

(b) rejects any nomination, the Speaker shall, within three days of the rejection, communicate the decision
The Independent Offices (Appointment) Bill, 2011

257

to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the Public Service Commission under subsection (5).

(9) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (8), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(10) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the independent office holders approved by the National Assembly.

(11) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection committee convened under subsection (4).

(12) Despite the foregoing provisions of this section, the President in consultation with the Prime Minister may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

6. An independent office shall become vacant if the holder—

(a) dies;

(b) by a notice in writing addressed to the President, resigns from office; or

(c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

7. Where a vacancy occurs in an independent office under section 6, the procedure for appointment provided for under section 5 shall apply.

8. If an independent office becomes vacant, or the holder of the office is, for any reason, unable to exercise the functions of the office, the President may appoint the next senior-most person within that office to act in that capacity, and a person so appointed shall continue to act in that capacity until a person has
been appointed to the independent office and assumed the functions of that office or, as the case may be, until the person in whose place he or she is acting has resumed those functions.

9. Each holder of an independent office shall, before assuming office, make and subscribe to the oath or affirmation set out in the Schedule before the Chief Justice.

**PART III—MISCELLANEOUS PROVISIONS**

10. (1) The annual report of an independent office under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain -

   (a) the financial statements of the independent office;

   (b) a description of the activities of the independent office;

   (c) such other statistical information as the independent office considers appropriate;

   (d) any other information relating to its functions that the independent office considers necessary.

(2) The annual report shall be published and publicised in the Gazette and in such other manner as the independent office may determine.

11. The provisions of section 29(2) of the Sixth Schedule to the Constitution shall apply with respect to the appointment of independent office holders before the first general election thereunder.
OATH/AFFIRMATION OF THE HOLDER OF INDEPENDENT OFFICE

1 …………………………………… having been appointed (the Controller of Budget/Auditor-General) under the Independent Offices (Appointment) Act, 2011, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said …………………………………

Before me this ……………… Day of ………………………

Chief Justice.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to prescribe the procedure for the identification and recommendation for appointment of the holders of independent offices, pursuant to Article 250(2) of the Constitution. These are specified in Article 248(3) as the offices of the Controller of Budget and the Auditor-General established by Articles 228 and 229 respectively. The Bill also contains provision for certain matters that are incidental or consequential to the establishment and administration of the said offices.

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

Dated the 26th May, 2011.

UHURU KENYATTA,
Deputy Prime Minister and Minister for Finance.