

THE CARBON CREDIT TRADING AND BENEFIT SHARING BILL, 2023

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THE CARBON CREDIT TRADING AND BENEFIT SHARING BILL, 2023

A Bill for

AN ACT of Parliament to establish a regulatory framework for the trading of carbon credits and benefit sharing in carbon credit trading; to establish the Carbon Credit Trading and Benefit Sharing Authority and to provide for its functions; to provide for the registration and regulation of the carbon credit trading business 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 Carbon Credit Trading and Benefit Sharing Act, 2023.

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

“application” means an application for the grant, renewal, assignment or surrender of a carbon credit trading permit;

“Authority” means the Carbon Credit Trading and Benefit Sharing Authority established under section 4;

“benefit sharing” means the fair and equitable sharing of monetary and non-monetary benefits from the use of natural resources;

“Board” means the Board of the Carbon Credit Trading and Benefit Sharing Authority established under section 7;

“Cabinet Secretary” means the Cabinet Secretary of the Ministry for the time being responsible for matters relating to finance;

“carbon credit trading” means the process of buying or selling verified or certified carbon emissions, reductions and removals in accordance with internationally recognised carbon credit standards;

“carbon credit trading permit” means a permit granted in accordance with this Act, which authorizes the holder to carry out carbon credit trading business, activities and operations;

“Committee” means the Committee established under section 40;

“community” means—

- (a) a group of people living around the area where carbon credit trading business is conducted; or
- (b) a group of people who may be displaced to make way for carbon credit trading business;

“community development and benefit sharing agreement” means an agreement entered into between an entity engaged in the carbon credit trading business and a community and that defines the manner in which revenue accruing from the use of natural resources shall be shared out among the national government, county government, local community and stakeholders;

“Director-General” means the Director-General of the Authority appointed under section 18;

No. 8 of 1999.

“environment” has the meaning assigned to it under the Environmental Management and Co-ordination Act, 1999;

No. 11 of 2016.

“Green House Gas” has the meaning assigned to it under the Climate Change Act, 2016;

“member” means the chairperson or any other member of the Board of the Carbon Credit Trading and Benefit Sharing Authority appointed under section 7;

“nationally determined contributions” means national plans and pledges made by Kenya to meet the universal goal of maintaining global temperature increases to well below 2 degrees Celsius above pre-industrial levels, while aiming for 1.5 degrees Celsius to avoid the worst impacts of climate change;

No. 8 of 1999.

“National Environment Management Authority” means the Authority established under the Environmental Management and Co-ordination Act, 1999.

“permit area” means the area covered by a carbon credit trading permit and includes any area either above or below the land and airspace of the Republic of Kenya including forests, internal and territorial waters and the seabed underlying these waters;

“register” means the Carbon Credit Trading Register established under section 52;

“restricted area” means any internal and territorial waters and land specified by the Cabinet Secretary, by notice in the Gazette, to be land upon

which such carbon credit trading business, activities and operations are excluded or restricted; and

“Tribunal” means the Carbon Credit Trading Tribunal established under section 39.

Guiding principles.

3. (1) In discharging their functions and duties under this Act, the Cabinet Secretary, the Authority, the Board, any state officer, state organ and any person administering this Act shall be guided by the following—

(a) the values and principles enshrined in the Constitution and in particular Articles 10, 66 (2), 201 and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution; and

(b) the provisions of Article 42 and 69 of the Constitution.

(2) The administration of this Act and any regulations made thereunder, shall take into account international standards, guidelines and best practice and shall be in keeping with the fundamental principles and obligations imposed on Kenya under any international treaty or agreement including—

(a) all transactions in carbon credit trading as carried out under this Act must result in the additional effect of a reduction of greenhouse gas emissions;

(b) all carbon credits which are reported under the requirements of this Act are to be accounted for in tonnes of carbon dioxide equivalent; and

(c) all carbon offset projects should ensure that emissions are kept out of the atmosphere for a reasonable length of time.

PART II — THE CARBON CREDIT TRADING AND BENEFIT SHARING AUTHORITY

Establishment of the Authority.

4. (1) There is established an authority to be known as the Carbon Credit Trading and Benefit Sharing Authority.

(2) The Authority 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 and disposing of movable and immovable property;

(c) borrowing money with the approval of the National Treasury in accordance with the relevant law;

(d) entering into contracts; and

(e) doing or performing such other things as may be necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

Functions of the Authority.

5. The functions of the Authority shall be to—

- (a) provide policy direction and guidance to the national and county governments on carbon credit trading business;
- (b) regulate and provide effective oversight over carbon credit trading business in Kenya;
- (c) ensure fair and equitable sharing of benefits among stakeholders;
- (d) ensure development and maintenance of investor protection standards with respect to carbon credit trading business;
- (e) promote the development of the carbon credit trading sector in Kenya;
- (f) enhance the capacity of the country to adopt carbon finance instruments;
- (g) ensure compliance with carbon credit trading conditions under this Act;
- (h) ensure compliance with the necessary reporting required under this Act;
- (i) facilitate access to information by the public, subject to any confidentiality restrictions;
- (j) enhance capacity development of local communities to help them freely participate in carbon credit trading business;
- (k) develop and implement public education and awareness programmes;
- (l) carry out consultations on the economic, social and human rights protection and the obligations of a public or private entity engaging in carbon credit trading business towards the citizens in the realisation of such rights;
- (m) establish mechanisms to monitor and promote the realisation of the economic, social and human rights of local communities;

- (n) promote collaboration and co-operation among state agencies, county governments, the private sector, local communities, research bodies, non-governmental organizations and other entities within or outside Kenya which are engaged in programmes related to carbon credit trading business to enhance the administration and operation of this Act;
- (o) develop policies to ensure compliance with international conventions and national policies relating to the sustainable development in carbon credit trading;
- (p) promote research, investigations and surveys in the field of carbon credit trading and facilitate use of science and technology in policy decisions and sustainable management of resources; and
- (q) undertake such other function as may be necessary for the execution of its mandate under this Act.

Powers of the Authority.

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

- (a) manage, control and administer the assets of the Authority in such manner and for such purposes as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments made to the Authority and make legitimate disbursements therefrom;
- (d) open such bank accounts for the funds of the Authority as may be necessary;
- (e) subject to approval of the Cabinet Secretary, invest any surplus funds of the Authority; and
- (f) enter into association with such other bodies or organizations within or outside Kenya as it may consider appropriate and in furtherance of the purposes for the Council is established.

Board of the Authority.

7. (1) The Authority shall be managed by a board of directors which shall consist of—

- (a) a chairperson who shall be appointed by the President;

- (b) the Principal Secretary in the Ministry for the time being responsible for finance or a representative designated in writing;
 - (c) the Principal Secretary in the Ministry for the time being responsible for trade or a representative designated in writing;
 - (d) the Principal Secretary in the Ministry for the time being responsible for environment or a representative designated in writing;
 - (e) the following persons appointed by the Cabinet Secretary—
 - (i) a representative of the private sector nominated by the body representing the largest number of institutions in the private sector;
 - (ii) a representative of the Civil Society nominated by the most representative registered national umbrella association of civil societies working on climate change;
 - (iii) a representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge; and
 - (f) the Director-General of the Authority who shall be an *ex-officio* member and who shall have no vote.
- (2) In appointing persons as members of the Board, the Cabinet Secretary shall ensure that—
- (a) not more than two-thirds of the members are of the same gender;
 - (b) the membership reflects the regional and ethnic diversity of Kenya; and
 - (c) the appointment is done through a competitive process.
- (3) An appointment under subsection (1) (a), (e)(i), (e)(ii) and (e)(iii) shall be by name and by notice in the *Gazette*.
- (4) The Cabinet Secretary shall make regulations to prescribe the criteria for appointment of members under subsection (1) (e)(i), (e)(ii) and (e)(iii).

(5) A representative member referred to under subsection (1) (b) (c) and (d) shall, when attending a meeting, be deemed for all purposes to be a member of the Board.

Qualification for appointment of chairperson and members.

8. (1) A person shall be qualified for appointment as the chairperson or a member of the Board if that person—

- (a) holds a degree in a relevant field from a university or an equivalent professional qualification recognized in Kenya;
- (a) has professional knowledge in matters of the environment, climate change, economics, finance, law or public administration;
- (b) has proven management or other relevant professional experience of fifteen years in the case of the chairperson and five years in the case of a member; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment as the chairperson or member if the person—

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an elected member of a local authority;
- (d) is an undischarged bankrupt;
- (e) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (f) has not met his or her legal obligations relating to tax and other statutory obligations.

Functions of the Board.

9. (1) The functions of the Board shall be to—

- (a) register carbon credit trading business subject to such conditions as it may deem appropriate;
- (b) regulate and supervise carbon credit trading projects and carbon credit trading business and their activities;

- (c) review, assess and approve carbon credit trading applications;
- (d) establish and maintain a register of carbon credit trading business in Kenya;
- (e) carry out investigations and inspections necessary to ensure compliance with this Act;
- (f) undertake accreditation of carbon credit auditors;
- (g) provide advice and support for proper and safe carbon credit trading methods;
- (h) prescribe guidelines for the registration of carbon credit trading business in Kenya;
- (i) co-ordinate the preparation and monitor the negotiation of the community development and benefit sharing agreement in collaboration with the national and respective county government where the carbon credit trading project is situated;
- (j) monitor the implementation of the community development and benefit sharing agreement and ensure that the benefits accruing to the community and stakeholders are shared in a fair and equitable way; and
- (k) prescribe fees and charges payable for carbon credit trading permits and business.

(2) Without prejudice to subsection (1), the Board shall advise and give recommendations, in writing, to the Cabinet Secretary on—

- (a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of carbon credit trading agreements;
- (b) the areas suitable for small scale and large scale carbon credit trading operations;
- (c) the areas where carbon credit trading operations may be excluded and restricted;
- (d) cessation or suspension of carbon credit trading permits;
- (e) appropriate policies and programs to govern carbon credit trading business in Kenya; and

(f) any matters which under this Act, are required to be referred to the Carbon Credit Trading and Benefit Sharing Authority.

Term of office. **10.** A member of the Board, other than the *ex-officio* member, shall hold office for a term of five years, renewable once.

Removal from office. **11.** A member of the Board may be removed from office only for—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct or abuse of office;
- (c) being declared bankrupt;
- (d) being convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (e) being absent from three consecutive meetings of the Board without the permission of the chairperson;
- (f) physical or mental incapacity to perform functions of office; or
- (g) incompetence or neglect of duty.

Vacation of office. **12.** (1) The office of a member of the Board shall become vacant if the member—

- (a) resigns by notice in writing addressed to the Cabinet Secretary;
- (b) dies; or
- (c) is otherwise removed from office.

Filling of vacancies. **13.** Where a vacancy occurs in the membership of the Board, the appointing authority shall appoint a new member in accordance with the provisions of this Act.

Remuneration of Board members. **14.** The Authority shall pay to the members of the Board such remuneration, fees or allowances for expenses as it may in consultation with the Salaries and Remuneration Commission, determine.

Committees of the Board. **15.** (1) The Board may establish committees for the better carrying out of its functions under this Act.

(2) The Board may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are necessary for the discharge of the functions of the Board.

(3) The Board may delegate to any committee its powers and duties as it deems fit.

(4) Except where the Board has by resolution authorized a committee to manage, regulate or conclude any matter, no act of a committee shall be binding on the Board until it has been approved by the Board.

(5) A committee appointed under this section shall elect its own chairperson and may also elect a vice-chairperson.

(6) The Director-General shall provide secretarial services for committees appointed under this Act.

Conduct of the business of the Board.

16. (1) The business and affairs of the Board shall be conducted in accordance with the First Schedule.

(2) Without prejudice to subsection (1), the Board may regulate its own procedure.

Protection from personal liability.

17. A member of the Board shall not be personally liable for any act or omission done or omitted to be done in good faith in the course of the performance of the functions of, or exercising the powers of the Board

Director-General.

18. (1) There shall be a Director-General who shall be the chief executive officer of the Authority and who shall be appointed through an open and competitive process by the Board.

(2) The Director-General shall serve on such terms and conditions of service as the Board shall determine.

(3) A person shall be qualified for appointment as Director-General if that person—

(a) holds a bachelor's degree in environment, climate change, economics, finance, law or public administration from a university recognized in Kenya;

(b) has at least ten years' experience, five of which must have been in senior management; and

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

(4) The Director-General shall serve for a term of four years, renewable once.

(5) The Director-General shall be—

(a) the secretary to the Board;

(b) responsible to the Board for the day-to-day management of the affairs of the Authority; and

(c) responsible for executing the decisions of the Board regarding all matters relating to the registration and regulation of carbon credit trading business.

Removal of
Director-General
from office.

19. The Director-General may be removed from office only for—

(a) violation of the Constitution or any other law;

(b) gross misconduct or abuse of office;

(c) being convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(d) physical or mental incapacity to perform functions of office; or

(e) incompetence or neglect of duty.

Staff of the
Board.

20. (1) The Board shall, through a competitive and transparent process, employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act and upon such terms and conditions of service as the Board may determine.

(2) In employing staff, the Board shall take into account the gender, regional balance and ethnic diversities of the people of Kenya, youth and persons with disabilities.

PART III — REGISTRATION AND REGULATION OF CARBON CREDIT TRADING BUSINESS

Forms of carbon
credit trading.

21. (1) A carbon credit trading business includes the business of a carbon credit trading exchange or any other activity as may be prescribed by regulations.

(2) A private or public entity may engage in carbon credit trading business in any of the following markets—

(a) voluntary carbon market; or

(b) carbon compliance market.

(3) The Cabinet Secretary shall make regulations and formulate guidelines for transacting in the carbon markets recognized under subsection (2).

Carbon credit trading purchase agreement.

22. A carbon credit trading business project shall be implemented through a carbon credit trading purchase agreement that shall aim to—

- (a) promote the mitigation of greenhouse gas emissions while fostering sustainable development; and
- (b) incentivize and facilitate participation in the mitigation of greenhouse gas emissions by authorized public and private entities.

Application for permit.

23. (1) A person or company who intends to carry on carbon credit trading business in Kenya shall apply for a carbon credit trading permit in the prescribed form and the application shall be accompanied by the prescribed fee.

(2) An application for a carbon credit trading permit shall be addressed to the Director-General and shall provide the following information—

- (a) the business in respect of which the permit is sought;
- (b) the area in respect of which the permit is sought accompanied by an Agreement signed with the land owner for lease of land for carbon credit trading business;
- (c) evidence of prior and informed consent of the local community;
- (d) proof of submission and approval of a social and environmental impact assessment report and community development and benefit sharing agreement;
- (e) the proposed carbon credit trading framework which addresses the adaptation measures and mitigation actions for sustainable development benefits; and
- (f) such additional information as the Cabinet Secretary may prescribe.

(3) The Director-General shall where satisfied that an application for registration conforms to the requirements of subsection (1), refer it to the Board for approval.

Restrictions on carbon credit trading.

24. (1) A holder of a carbon credit trading permit shall engage in carbon credit trading or conduct his operations only in accordance with this Act, best industry practice, international guidelines and any other guidelines as shall be prescribed from time to time by the Cabinet Secretary.

(2) A person shall not engage in carbon credit trading business in Kenya unless that person has been granted a permit in accordance with this Act.

Conditions for grant of carbon credit trading permit.

25. A carbon credit trading permit may be granted subject to such conditions as may be determined by the Board including—

- (a) the protection of the environment;
- (b) sustainable development;
- (c) safety of carbon credit trading operations;
- (d) the country's nationally determined contributions;
- (e) protection of the lawful interests of the holder of any other carbon credit trading permit or locals; and
- (f) maximum number of credits any person or a company may hold.

Obligations under the permit.

26. The holder of a carbon credit trading permit shall—

- (a) comply with the conditions of the carbon credit trading permit, any applicable community development and benefit sharing agreement and any directions issued by the Board or an authorized officer in accordance with this Act;
- (b) take all necessary measures to protect the environment; and
- (c) comply with any prescribed record keeping obligations.

Term of the permit.

27. A permit granted under this Act shall be valid for a period seven years from the date of issue and shall be renewable upon application in accordance with this Act.

Form of the permit.

28. A carbon credit trading permit shall contain the following information—

- (a) the carbon credit trading business in respect of which the permit is issued;
- (b) name and address of the holder;

- (c) date of grant and expiry of the permit;
- (d) the area in respect of which the permit issued;
- (e) the approved programme for carbon credit trading operations;
- (f) the conditions subject to which the permit is issued;
- (g) the details of the approved social and environmental impact assessment report; and
- (h) such other information as the Cabinet Secretary may consider necessary.

Record keeping and reporting requirements.

29. (1) The holder of a carbon credit trading permit shall keep at the registered office, a complete and accurate record of the carbon credit trading operations in the prescribed form.

(2) For the purpose of subsection (1) records shall include—

- (a) financial statements and such other books of account as the Authority may prescribe; and
- (b) such other reports and information as may be prescribed or otherwise determined by the Authority.

Revocation of a permit.

30. (1) The Board may revoke a permit granted where the holder of the permit—

- (a) contravenes the terms and conditions of the permit;
- (b) commits an offence under this Act;
- (c) makes a false statement in the application for the grant or renewal of the carbon credit trading permit; or
- (d) is adjudged bankrupt or in the case of a company it is declared insolvent.

(2) A carbon credit trading permit shall cease to have effect upon its cancellation.

(3) The revocation of a carbon credit trading permit shall not prejudice any liability or obligation incurred under or in relation to the carbon credit trading permit prior to its revocation.

(4) Upon revocation of a permit, the holder shall deliver to the Authority within the prescribed period all the records which, prior to revocation or expiration, he was obliged to maintain under this Act.

(5) A holder of a carbon credit trading permit, who is aggrieved by the decision of the Authority, may appeal to the Authority within thirty days of the decision in accordance with the provisions of this Act.

Cessation of carbon credit trading business.

31. (1) The holder of a carbon credit trading permit shall give the Director-General a twelve months' notice of any intention to cease carbon credit trading operations in Kenya.

(2) A notice given under this section shall include a statement that sets out the technical, social and economic basis for the proposed cessation of the carbon credit trading business.

(3) Upon receipt of a notice given in accordance with this section, the Authority shall investigate the circumstances leading to the proposed cessation of carbon credit trading operations and if the Director-General is satisfied, the cessation shall be granted.

(4) The Cabinet Secretary shall make Regulations to provide for the conditions to manage the carbon credit trading area where a cessation notification has been approved.

PART IV — COMMUNITY DEVELOPMENT AND BENEFIT SHARING AGREEMENT

Community development and benefit sharing agreement.

32. (1) Every carbon credit trading business project shall be implemented through a community development and benefit sharing agreement.

(2) A private or public entity engaged in carbon credit trading business shall prior to implementation of the project, sign a community development and benefit sharing agreement with the community where operations are to be carried out in such a manner as shall be prescribed in Regulations.

Form of the agreement.

33. (1) The community development and benefit sharing agreement shall outline the—

- (a) rights and obligations of the private or public entity engaged in carbon credit trading business and local community;
- (b) list of stakeholders including the national government, respective county government where the project is situated, local community and other relevant stakeholders;

- (c) monetary benefits that may accrue from the project and the initial contribution of the private or public entity engaged in the carbon credit trading business;
- (d) terms on benefit sharing among the national government, respective county government, local community and other relevant stakeholders;
- (e) rules and procedure of engagement with the local community including public participation, public awareness and consultation;
- (f) process for obtaining prior informed consent or approval from the county government and local community; and
- (g) dispute resolution mechanism.

(2) Every community development and benefit sharing agreement shall be recorded in the Carbon Credit Trading Register.

PART V — ENVIRONMENT, HEALTH AND SAFETY

Environment,
health and safety
compliance.

34. A public or private entity shall carry out carbon credit trading business in the permit area in accordance with all the applicable environment, health, safety laws and carbon credit trading industry practice.

Social and
environmental
impact
assessment.

35. (1) All carbon credit trading business and projects for implementation shall be subject to social and environmental impact assessment.

(2) A public or private entity engaged in carbon credit trading business shall undertake or cause to be undertaken the preparation of social and environmental impact assessment at their own expense and shall submit such impact assessment report to the Authority for approval and submit a copy to the National Environment Management Authority prior to being issued with any permit by the Authority.

(3) The social and environmental impact assessment report under this section shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee.

(3) The Cabinet Secretary in consultation with the Authority and relevant stakeholders shall make regulations and formulate guidelines in respect of social and environmental impact assessments.

PART VI — DISPUTE RESOLUTION

Dispute resolution.

36. (1) All disputes between parties to a carbon credit trading purchase agreement arising from carbon credit trading operations shall be resolved through alternative dispute resolution mechanisms in the first instance.

(2) If any difference or dispute remains unresolved, either party shall have the right to serve upon the other party a detailed statement stating the issues in dispute and either party shall have the right, subject to subsection (3), to have such difference or dispute be resolved through arbitration in accordance with UNCITRAL arbitration rules adopted by the United Nations Commission on International Trade Law.

(3) Any other disputes arising from a regulated function under this Act shall be referred to the Authority for determination in the first instance.

Appeal against a decision of the Authority.

37. (1) Any person who is dissatisfied with the decision of the Authority may appeal to the Carbon Credit Trading Tribunal within thirty days of receipt of the decision.

(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period

Establishment of Carbon Credit Trading Tribunal.

38. There is established the Carbon Credit Trading Tribunal for the purpose of hearing and determining disputes and appeals in accordance with this Act.

Members of the Tribunal.

39. (1) The Tribunal shall consist of —

(a) a chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court and who has at least ten years' experience in environment, climate change, economics, finance, law or public administration; and

(b) six other persons possessing knowledge and experience in environment, climate change, economics, finance, law or public administration and who are not in the employment of the Authority.

(2) A person shall be qualified for appointment under subsection (1) if that person—

(a) is a citizen of Kenya;

(b) holds a degree in a relevant area from a university recognized in Kenya;

(c) is a member in good standing of the relevant professional association; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Cabinet Secretary shall make regulations for the nomination, selection and appointment of members of the Tribunal and shall—

(a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalized communities; and

(c) ensure that no more than two-thirds of the members shall be of the same gender.

(4) The members of the Tribunal shall hold office for a period of three years, but may be eligible for reappointment for one further term.

(5) The members of the Tribunal shall serve on part-time basis.

Vacancy in the
Tribunal.

40. (1) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of appointment;

(b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of member of the Tribunal;

(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (3); or

(d) if he or she dies or resigns from office.

(2) A person desiring the removal of a member of the Tribunal on the ground specified in subsection 1(c) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.

(3) The Cabinet Secretary shall consider the complaint and if satisfied that it discloses a ground under subsection 1(c)—

(a) may suspend the member pending the outcome of the complaint; and

(b) shall appoint a Committee in accordance with subsection (4).

(4) The Committee appointed under subsection (3) (b) shall consist of—

(a) a person who holds or has held office of a judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as judge of the high court; and

(c) two other persons of high moral character and recognized competence in the fields of environment, climate change, economics or finance who may be relied upon to exercise independent judgment.

(5) The Committee shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary who shall act in accordance with the recommendation within thirty days.

Oath of office.

41. A person who is appointed a chairperson or member of the Tribunal shall before assuming the duties of the office, take and subscribe, before the Chief Justice, to the respective oath or affirmation set out in the Second Schedule.

Disclosure of interest.

42. Where a member of the Tribunal, as constituted for the purposes of a proceeding, has any interest, direct or indirect, that could conflict with the proper performance of the member's functions, he or she shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal or take part in a decision of the Tribunal on the matter.

Secretary and other staff.

43. (1) The Cabinet Secretary shall appoint the secretary to the Tribunal.

(2) A person shall be qualified to be appointed to hold office as secretary to the Tribunal under subsection (1) if such a person is an advocate of the High Court of Kenya of not less than seven years standing.

(3) The Tribunal may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

Quorum and conduct of business of the Tribunal.

44. (1) The Chairperson shall preside at all sittings of the Tribunal at which he is present and in the absence of the Chairperson the Vice-Chairperson shall preside.

(2) The quorum of the Tribunal shall be three members including the Chairperson or the Vice-Chairperson as the case may be.

Technical advice. **45.** The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings provided that such persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

Remuneration of members of the Tribunal. **46.** (1) The Tribunal shall, in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission, pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.

(2) Any person who gives technical advice in accordance with section 44 to the Tribunal shall be paid such allowance as may be determined by the Tribunal.

(3) The members of the Tribunal shall serve on part-time basis.

Jurisdiction of the Tribunal. **47.** (1) The Tribunal shall have appellate jurisdiction to hear and determine all matters referred to it, relating to the carbon credit trading sector arising under this Act or any other law.

(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.

(3) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and in exercise of its functions may refer any matter back to the Authority for re-consideration.

(4) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

(5) The Tribunal shall hear and determine matters referred to it expeditiously.

Procedure of the Tribunal. **48.** (1) The Tribunal shall determine its rules of procedure which shall be published in the *Gazette* by the chairperson.

(2) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice and rules of evidence of a similar nature.

(3) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.

Power of review and appeals from the Tribunal. **49.** (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.

(2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.

(3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.

(4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.

Funds of the Tribunal.

50. (1) The funds of the Tribunal shall consist of—

- (a) such monies as may, from time to time, be appropriated by Parliament for that purpose;
- (b) interest from bank deposits; and
- (c) grants as may approved by the Judicial Service Commission.

(2) There shall be paid out of the funds of the Tribunal, all expenditure incurred by the Tribunal in the exercise of its powers or the performance of its functions under this Act.

Protection of members of Tribunal from personal liability.

51. A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

PART VII— CARBON CREDIT TRADING REGISTER

Carbon credit trading register.

52. (1) The Carbon Credit Trading and Benefit Sharing Authority shall establish and maintain an up to date computerized registry system to be known as the carbon credit trading register.

(2) The registry system established under subsection (1) shall include a register of—

- (a) each application, grant, assignment, transfer, notice, surrender, suspension and cancellation of a carbon credit trading permit;
- (b) details of the carbon credit trading projects including the description of the project, location and applicable methodology;
- (c) community development and benefit sharing agreements; and

(d) carbon credit trading purchase agreements;

(3) The register shall be a public document and may be inspected by an interested person upon the payment of a prescribed fee.

(4) The Board may prescribe such other records and instruments that shall be entered into the register.

Power to correct register.

53. The Director-General shall, where—

(a) an error is made in the register; or

(b) a matter is incorrectly entered or recorded in the register,

notify the person affected by the error and rectify the error by correcting the entry in the register and keeping the records.

PART VIII – MONITORING, COMPLIANCE AND ENFORCEMENT

General powers of search and inspection.

54. The Board or a duly authorized officer may, at all reasonable times, enter upon any land, permit area or carbon credit trading business, or any premises for the purpose of—

(a) inspecting such area, premises or workings and examining prospecting or carbon credit trading operations being carried out thereat;

(b) ascertaining whether the provisions of this Act are being complied with;

(c) examining books, accounts, vouchers, logs, journals, documents or records of any kind required to be kept under this Act, the terms and conditions of any carbon credit trading permit or carbon credit trading agreement and taking copies of such books, accounts, vouchers, documents or records; or

(d) obtaining such other information as deemed necessary.

Offences relating to unauthorised operations.

55. A person who engages in any carbon credit trading business, activities and operations without a valid permit granted under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or a fine not exceeding ten million shilling or to both imprisonment and fine.

Offences relating to condition of permits.

- 56.** A person who—
- (a) contravenes a provision of this Act or regulations prescribed thereunder concerning the exercise of rights or obligations under any permit obtained under this Act; or
 - (b) contravenes a condition of a permit,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or to a fine of not less than one million shillings, or to both an imprisonment term and a fine.

Offences relating to inspection.

- 57.** A person who—
- (a) hinders or obstructs the Cabinet Secretary or an authorised public officer in the exercise of their duties under this Act or Regulations made thereunder;
 - (b) fails to comply with a lawful order or requirement made by the Cabinet Secretary or an authorised public officer in accordance with this Act or Regulations made thereunder;
 - (c) denies the Cabinet Secretary or an authorised public officer entry upon any land or premises that they are empowered to enter under this Act or Regulations made there under;
 - (d) impersonates the Cabinet Secretary or an authorised public officer; or
 - (e) denies the Cabinet Secretary or an authorised public officer access to records or documents kept pursuant to this Act or Regulations made thereunder,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or to a fine of not less than one million shillings, or to both an imprisonment term and a fine.

Offences relating to social and environmental impact assessments.

- 58.** A person who—
- (a) fails to conduct or submit a social and environmental impact assessment in accordance with the requirements of this Act or regulations made thereunder;
 - (b) fraudulently makes false statements in a social and environmental impact assessment report submitted under this Act or regulations made thereunder,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of not more than two million shillings or to both such imprisonment and fine.

Offences by bodies corporate, partnerships, principals and employers.

59. (1) When an offence against this Act, is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.

(2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.

(3) A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person.

(4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.

Offences relating to records and statements.

60. (1) A person who—

- (a) fails to keep records required to be kept under this Act;
- (b) fraudulently makes false statements in any records required to be kept under this Act;
- (c) makes or causes to be made an unauthorised entry or alteration in, or deletion from, the register or on a permit;
- (d) by means of a false representation or the concealment of a material fact, procures or attempts to procure carbon credit trading permit for himself or another person;
- (e) makes or causes to be made in connection with an application for carbon credit trading permit a false declaration in a document used for the purpose of establishing his identity or qualifications;
- (f) wilfully destroys or obliterates an entry in the register or causes the same to be destroyed or obliterated;

(g) without the permission of the holder, wilfully destroys a carbon credit trading permit or causes the same to be destroyed; or

(h) forges or utters, knowing the same to be forged, a document purporting to be a carbon credit trading permit,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of not more than two million shillings or to both such imprisonment and fine.

(2) Notwithstanding subsection (1), a person who commits an offence thereunder and who admits to it in writing shall be liable to pay to the Authority a penalty not exceeding one million shillings.

General penalty.

61. A person who commits an offence under this Act or regulations made under this Act for which no penalty is expressly provided, is liable on conviction, to a term of imprisonment of not more than three years, or to a fine of not more than five million shillings, or to both such fine and imprisonment.

PART IX— FINANCIAL PROVISIONS

Sources of funds.

62. The funds and assets of the Authority shall consist of—

(a) monies accruing or vesting in the Authority in the course of the exercise of the powers or the performance of its functions under this Act;

(b) such monies as may be payable to the Authority pursuant to this Act or any other written law;

(c) such gifts as may be donated to the Authority; and

(d) all monies from any other source provided, donated or loaned to the Board.

Financial year.

63. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

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

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

- (a) payment of salaries, allowances, pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (b) proper maintenance of the buildings and grounds of the Authority;
- (c) proper maintenance, repair and replacement of the equipment and other property of the Authority; and
- (d) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Authority may think fit.

(3) The annual estimates shall be approved by the Board before commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for approval. The Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Authority given with the prior approval of the Cabinet Secretary.

Annual reports.

65. The Authority shall, before the end of June in each year, cause a report on the work undertaken by the Authority during that financial year to be supplied to the Cabinet Secretary, and shall cause such further information as may be required by the Cabinet Secretary from time to time to be supplied.

Accounts and audit.

66. (1) The Board shall cause to be kept all proper books and records of the income, expenditure, assets and liabilities, undertakings, funds, contracts, transactions and other business of the Authority.

(2) Within a period of three months from the end of each financial year, the Authority shall submit to the Auditor-General the accounts of the Authority together with—

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

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(3) The Board shall ensure that all money received is property brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities.

(4) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act.

Investment of funds. **67.** The Board may invest any of its surplus funds in securities in which for the time being trustees may by law invest trust funds or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART X — MISCELLANEOUS PROVISIONS

Framework for reporting, transparency and accountability. **68.** (1) The Cabinet Secretary shall, in accordance with this Act and international guidelines and best practices, develop a framework for reporting, transparency and accountability in the carbon credit trading sector.

(2) The reporting, transparency and accountability framework referred to under subsection (1) shall include the publication of all agreements, records, annual accounts and reports of revenues, fees, taxes, royalties and other charges, as well as, any other relevant data and information that support payments made by the private or public entity engaged in carbon credit trading business and payments received by the national government, county governments, local community and other relevant stakeholders.

Community rights and compensation. **69.** Subject to the provisions of the Constitution and any other written law, the community shall have the right to—

- (a) be informed through an appropriate communication strategy prior to carrying out of any carbon credit trading business, activities and operations within their county;
- (b) make any inquiries, interrogate planned activities which directly or indirectly affect their interaction with the ecosystem during the preliminary phase of awarding of carbon credit trading business permits for consideration;
- (c) be adequately compensated for land taken over for carbon credit trading business or operations in accordance with relevant land laws and the Constitution;
- (d) be compensated by any private or public entity engaged in carbon credit trading business who causes environmental damage or pollution;
- (e) be compensated for any related injury and/or illness arising directly or indirectly from the activities of a private or public entity engaged in carbon credit trading business, if the entity was in a position to take measures to prevent the occurrence of the same;

- (f) be compensated for damage to property and lost source of revenue or livelihood as a result of carbon credit trading business, activities and operations taking place in their immediate surroundings;
- (g) be educated and sensitized on carbon credit trading business, activities and operations within their county;
- (h) be educated and sensitized on carbon credit trading business, activities and operations within their county; and
- (i) be able to participate in planning for corporate social responsibility projects that are to be implemented within the permit area by persons engaging in carbon credit trading business in consultation with the national government and a county government.

PART XI — DELEGATED LEGISLATION

Regulations.

70. (1) The Cabinet Secretary upon recommendation by the Authority, may make regulations for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing, regulations under this section may provide for—

- (a) the criteria for the appointment of Board members;
- (b) the duties of the Director-General;
- (c) the criteria for the appointment of members of the Tribunal;
- (d) the forms of carbon credit trading business;
- (e) standards and guidelines for carbon credit trading business;
- (f) value of per metric ton of carbon dioxide equivalent of carbon credit;
- (g) procedure for negotiation and signing of community development and benefit sharing agreement;
- (h) the benefit sharing formula among the national government, county government, local community and other stakeholders;
- (i) the fees payable under this Act;

- (j) standards and specifications for technologies, processes, appliances and devices to be used in carbon credit trading business;
 - (k) steps and procedures necessary for the application of carbon credit trading technologies and procedures;
 - (l) procedures for the conduct of social and environmental impact assessments;
 - (m) the qualifications, criteria and conditions subject to which a person may be accredited as carbon credit auditors and the procedure for such accreditation;
 - (n) the manner and the intervals of time for conducting carbon credit audit by an accredited carbon credit auditor;
 - (o) prescribing the procedure for issuing the carbon credit certification;
 - (p) the type, manner and form of carbon credit data and information that must be published;
 - (q) procedures for the conduct of public participation and public awareness programmes under this Act;
 - (r) matters relating to the verification mechanism of carbon credit units;
 - (s) matters relating to inspection and audit of carbon credit trading business projects;
 - (t) form of and fee for filing any appeal under the Act; or
 - (u) anything required to be prescribed under this Act.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the power of the Cabinet Secretary to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
 - (b) the principles and standards set out under the Statutory Instruments Act and the Interpretation and General Provisions

Act in relation to subsidiary legislation shall apply to regulations made under this Act.

(4) The Regulations necessary to bring into effect the provisions of this Act shall be made within one year after the coming into force of this Act.

FIRST SCHEDULE

(s. 16)

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

- 1.** (1) The Board shall hold not less than four meetings in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of fourteen days.

(3) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(4) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

(5) No meeting of the Board shall be held at any place other than the principal office of the Authority except with the prior written approval of the State Corporations Advisory Committee.
- 2.** (1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and which matter that person 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.

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Board or committee otherwise directs, take part in any consideration or, discussion of, or vote on any question touching on the matter.

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

(4) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.
- 3.** (1) The quorum for the conduct of business at a meeting of the Board shall be two-thirds of the total number of members of a Board or the number nearest to but not less than two-thirds of all the members of the Board.

(2) Where there is a vacancy in the Board, the quorum of the meeting shall not be less than three appointed members.
- 4.** A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a casting vote.
- 5.** Subject to this Act, the Board shall determine procedure for the conduct of its business and cause to be kept records of minutes of its proceedings and decisions.

SECOND SCHEDULE

(s. 41)

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER

I..... having been appointed (the chairperson/member of) the Tribunal under the Carbon Credit and Benefit Sharing Act, 2023, do swear/ solemnly 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 knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me thisDay of

Chief Justice.

MEMORANDUM OF OBJECTS AND REASONS

Statements of the Objects and Reasons for the Bill

The principal object of this Bill is to establish a regulatory framework for the trading of carbon credits and benefit sharing in carbon credit trading business; to establish the Carbon Credit Trading and Benefit Sharing Authority and to provide for its functions; to provide for the registration and regulation of the business of carbon credit trading and for connected purposes. It is divided into eleven Parts and 70 clauses.

Part I of the Bill (clauses 1 to 3) provides for preliminary matters including the short title of the Bill; the definition of key terms; the objects of the Act and guiding principles.

Part II of the Bill (clauses 4 to 20) provides for the establishment of the Carbon Credit Trading and Benefit Sharing Authority; its functions; its powers; the composition of its Board; the qualifications for appointment of chairperson and members of the Board; the functions of the Board; the tenure of members of the Board; removal of chairperson and members of the Board; remuneration of Board members; vacancies and the filling of vacancies in the Board; committees of the Board; conduct of meetings of the Board; protection of Board members from personal liability; appointment and removal of Director-General and staff of the Board.

Part III of the Bill (clauses 21 to 31) provides for the registration and regulation of carbon credit trading business; the forms of carbon credit trading; application for carbon credit trading permit; restriction on carbon credit trading business; conditions for grant of carbon credit trading permit; obligations under the permit; term of the permit; form of the permit; record keeping and reporting requirements; revocation of permit; and cessation of carbon credit trading business.

Part IV of the Bill (clauses 32 and 33) provides for the community development and benefit sharing agreement.

Part V of the Bill (clauses 34 and 35) provides for environment, health and safety compliance and social and environmental impact assessments.

Part VI of the Bill (clauses 36 to 51) provides for the dispute resolution mechanism; appeals against a decision of the Authority; establishment of Carbon Credit Trading Tribunal; members of the Tribunal; vacancy in the Tribunal; Oath of office; disclosure of interest; Secretary and other staff; quorum and conduct of business of the Tribunal; technical advice; remuneration of members of the Tribunal; jurisdiction of the tribunal; power to review and appeals from Tribunal; procedure of the Tribunal; funds of the Tribunal and protection from personal liability of members of the Tribunal.

Part VII of the Bill (clauses 52 and 53) provides for the establishment of a carbon credit trading register; records of the carbon credit trading registry and power to correct register.

Part VIII of the Bill (clauses 54 to 61) provides for monitoring, compliance and enforcement provisions; offences relating to unauthorized operations, condition of permits, inspection, social and environmental impact assessments; offences by bodies corporates,

partnerships, principals and employers, offences relating to records and statements; and general penalty.

Part IX of the Bill (clauses 62 to 67) provides for the financial provisions including the funds of the Authority; the financial year of the Authority; the annual estimates of the Authority; annual reports; the accounts and audit of the Authority; and the annual reports of the Authority.

Part X of the Bill (clause 68 and 69) of the Bill provides for miscellaneous matters including framework for reporting, transparency and accountability; and community rights and compensation.

Part XI of the Bill (clause 70) provides for the delegated powers of the Cabinet Secretary to make Regulations under the Act.

The **First Schedule of the Bill** provides for the conduct of the business and affairs of the Board of the Authority.

The **Second Schedule of the Bill** provides for the oath/affirmation of the Office of chairperson or member of the Tribunal.

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

This Bill delegates legislative powers and does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in that it contains provisions that among others affect local community participation and benefit sharing with local community and counties. The Bill therefore affects the functions and powers of county governments in terms of 110(1)(a) of the Constitution.

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

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for in the estimates.

Dated the....., 2023.

HON. JOSEPH LEKUTON,
Member of Parliament.