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**KENYA FILM BILL, 2020**

**A Bill for**

**AN ACT** of Parliament to consolidate the legislative framework of laws relating to the film industry; to provide for the establishment, powers and functions of the film industry entities; to provide for the development, funding and regulation of the film industry; and for connected purposes.

**ENACTED** by the Parliament of Kenya as follows—

<b>PART I—PRELIMINARY</b>	
<b>Short title.</b>	<b>1.</b> This Act may be cited as the Kenya Film Act, 2020.
<b>Interpretation.</b>	<b>2.</b> In this Act, unless the context otherwise requires—  “ <b>Cabinet Secretary</b> ” means the cabinet secretary for the time being responsible for matters relating to film;  “ <b>Commission</b> ” means the Kenya Film Commission established in section 11 of this Act;  “ <b>distribution</b> ” in relation to a film means selling, supplying or letting for hire, offering or agreeing to sell, supply or let for hire or causing or permitting to be sold, supplied to or hired within Kenya;  “ <b>exhibition</b> ” means the display of a film to the public or a section of the public, whether or not a charge is made for admission to the premises in which the exhibition takes place;  “ <b>film</b> ” means any sequence of visual images recorded or generated in such a manner that by such recording or graphics, such images will be capable of being seen as moving pictures and includes any pictures intended for distribution and exhibition through any medium including the internet;

	<p><b>“film agent”</b> means a duly authorised representative of a foreign film practitioner or a film enterprise registered with the Kenya Film Classification Board;</p> <p><b>“film association”</b> means a body corporate duly authorised to represent one or more categories of film practitioners by whatever name and accredited by the Commission.</p> <p><b>“film federation”</b> means the umbrella body for film associations established under the relevant legislation for film and registered by the Commission;</p> <p><b>“film fund”</b> means the Fund for film established under section 38 of this Act;</p> <p><b>“film practitioner”</b> means any person who practices their trade in film including writers, editors, producers, directors and actors;</p> <p><b>“possession”</b> in relation to a film includes keeping or storing and also having custody of a film;</p> <p><b>“poster”</b> means printed or digital material used to promote a film;</p> <p><b>“re-classification”</b> in relation to a classified film, means to review the classification for the film and to alter the classification by raising or lowering the classification applicable to the film;</p> <p><b>“tribunal”</b> means the Communications and Multimedia Appeals Tribunal established under section 102 of the Kenya Information and Communications Act.</p> <p><b>“watershed period”</b> means the time between 5:00 a.m. and 10:00 p.m. or such other time as may be prescribed by the Communication Authority of Kenya within which films intended for adult audience is not to be aired;</p>
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<b>Object of the Act.</b>	<p><b>3.</b> The object of this Act is to—</p> <p>(a) provide for the establishment, composition and functions of—</p> <p>(i) the Kenya Film Commission;</p> <p>(ii) the Kenya Film Classification Board;</p> <p>(iii) the Kenya Film Academy; and</p> <p>(iv) the Kenya Film Fund;</p> <p>(b) provide the legislative framework for the promotion, development and organisation of the film industry in Kenya;</p> <p>(c) provide the legislative framework for regulation of film content in Kenya; and</p> <p>(d) provide for dispute resolution within the industry to be solved by the Tribunal.</p>
<b>Guiding principles</b>	<p><b>4.</b> The implementation of this Act shall be guided by—</p> <p>(a) the national values and principles of governance in Article 10 and the values and principles of public service in Article 232(1) of the Constitution;</p> <p>(b) the principles—</p> <p>(i) of equality and non-discrimination of the rights of all persons in the film industry;</p> <p>(ii) of co-operation, collaboration and consultation between the two levels of government; and</p> <p>(iii) of promotion of the best interest of the growth and development of the industry; and</p> <p>(c) the national development plans and in particular focus on the prioritisation of the use of technology to enhance access, efficiency and effectiveness of interventions by the government.</p>
<b>Scope of the Act.</b>	<p><b>5.</b> This Act applies to any person involved in the film industry in Kenya.</p>
<b>PART II—NATIONAL FILM POLICY AND PLAN</b>	
<i>Film policy and plan</i>	
<b>National film policy.</b>	<p><b>6.</b> (1) The Cabinet Secretary shall in consultation with the relevant stakeholders develop and publish a national film policy which shall be reviewed every five years.</p>

	(2) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national film policy.
<b>Film industry plans.</b>	<b>7.</b> (1) The Cabinet Secretary shall in consultation with the relevant stakeholders develop, publish and review film industry plans for the growth, development and regulation of the industry.
	(2) Each national film entity shall develop and submit to the Cabinet Secretary plans for the provision of services in accordance with its mandate.
	(3) The Cabinet Secretary may request any other relevant entity to submit a plan in accordance with its mandate or impact to the film industry.
	(4) The Cabinet Secretary shall consolidate the plans contemplated in subsections (2) and (3) into an integrated national film industry plan which shall be reviewed every three years.
	(5) The national film industry plans shall— (a) take into account the national film policy; and (b) serve as a guide for film promotion, development, organisation and regulation for the duration of the plan.
<b>Monitoring implementation of the national film plan.</b>	<b>8.</b> Within three months after the end of each financial year, the Cabinet Secretary shall— (a) be provided with a report of the progress of implementation of the national film plan by every national film entity; and (b) collate and publish a report on the implementation of the national film industry plan.
<b>Government obligations.</b>	<b>9.</b> (1) The Cabinet Secretary shall— (a) promote the adoption of a conducive policy environment for investments in film infrastructure development; (b) promote the adoption of international standards and guidelines for the promotion, development, organisation and regulation of the film industry; (c) develop and implement a fair, transparent and equitable strategy for ensuring access to education and employment opportunities in the film industry; and

	(d) promote the organisation of film industry players under an umbrella body to promote the adoption of quality standards and industry unity.
<b>PART III— NATIONAL FILM ENTITIES</b>	
<i>Kenya Film Commission</i>	
<b>Interpretation of this Part.</b>	<b>10.</b> In this Part, the “Board” means the Board of Directors of the Kenya Film Commission appointed in accordance with section 14.
<b>Establishment of the Kenya Film Commission.</b>	<b>11.</b> (1) There is established the Kenya Film Commission, hereinafter referred to as the Commission.  (2) The Commission shall be a body corporate with perpetual succession, a common seal and shall in its corporate name be capable of— <ul style="list-style-type: none"> <li>(a) suing and being sued;</li> <li>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;</li> <li>(c) borrowing and lending money; and</li> <li>(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.</li> </ul>
	(3) Except as otherwise provided in this Act, the Commission shall be independent in the performance of its functions, exercise of its powers and shall not be subject to the direction or control of any person or authority.
<b>Functions of the Commission.</b>	<b>12.</b> The functions of the Commission are— <ul style="list-style-type: none"> <li>(a) develop, promote and market the film industry locally and internationally;</li> <li>(b) identify programmes that facilitate growth of the film industry;</li> <li>(c) generate, manage and disseminate film industry research, information and market data;</li> <li>(d) act as a national repository and archive for the Kenyan film industry;</li> <li>(e) promote and facilitate the development of local film content;</li> <li>(f) Develop the criteria for the identification and certification of what constitutes a Kenyan Film</li> </ul>



	<ul style="list-style-type: none"> <li>(g) develop an accreditation, certification and skills recognition framework for the film industry in consultation with relevant stakeholders;</li> <li>(h) develop and administer national film infrastructure which may include film studio complexes, incubation centres and locations database for the film industry in Kenya;</li> <li>(i) coordinate and certify film practitioners, associations and organizations participating in the production of film, animation and new media;</li> <li>(j) administer the Kenya Film Academy established under section 26 of this Act;</li> <li>(k) administer the Kenya Film Fund established under section 38 of this Act;</li> <li>(l) provide liaison services to film practitioners on services required from government on matters relating to the promotion, marketing and development of the film industry;</li> <li>(m) develop incentives to promote investment in the film industry; and</li> <li>(n) partner, develop and create linkages with county, national and international organizations, both public and private, to improve and facilitate investment in the film industry.</li> </ul>
<p><b>Powers of the Commission.</b></p>	<p><b>13.</b> (1) The Commission shall have all the powers necessary for the performance of its functions under this Act.</p>
	<p>(2) Without prejudice to the generality of subsection (1), the Commission shall have the power to—</p> <ul style="list-style-type: none"> <li>(a) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made and the fees payable in respect of such application;</li> <li>(b) prescribe the criteria, form and manner of accreditation and skills recognition in the film industry in Kenya;</li> <li>(c) determine the criteria for the recognition of the umbrella organisation representing film industry players;</li> <li>(d) determine the criteria for identification of Kenyan film;</li> </ul>

	<ul style="list-style-type: none"> <li>(e) determine the technological and administrative system for the archiving function;</li> <li>(f) determine the applicable criteria for the issuing of incentives to film industry players; and</li> <li>(g) determine, in consultation with the Director, the applicable criteria for admission and certification under the Kenya Film Academy.</li> </ul>
<b>Board of the Commission.</b>	<p><b>14.</b> (1) The management of the Commission shall vest in a Board which shall consist of—</p> <ul style="list-style-type: none"> <li>(a) a Chairperson appointed by the President;</li> <li>(b) the Principal Secretary of the Ministry for the time being responsible for the film industry or their authorized representative;</li> <li>(c) the Principal Secretary to the National Treasury or their authorized representative;</li> <li>(d) one representative of the body representing film industry practitioners in the country;</li> <li>(e) five other persons, who shall be appointed by the Cabinet Secretary; and</li> <li>(a) the Chief Executive Officer of the Board, who shall be an <i>ex-officio</i> member.</li> </ul>
	<p>(2) In making the appointments under (1)(e) the Cabinet Secretary shall appoint members by virtue of their knowledge and experience in matters relating to—</p> <ul style="list-style-type: none"> <li>(a) finance and accounting;</li> <li>(b) film and creative arts;</li> <li>(c) law; or</li> <li>(d) communications and technology.</li> </ul>
	<p>(3) A person is qualified for appointment as the Chairperson or a member of the Board if such person—</p> <ul style="list-style-type: none"> <li>(a) is a citizen of Kenya;</li> <li>(b) holds a degree from a university recognized in Kenya;</li> <li>(c) has in the case of the Chairperson, at least eight years, or in the case of a member, at least six years' professional experience in the film industry; and</li> <li>(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.</li> </ul>
<b>Chief Executive Officer.</b>	<p><b>15.</b> (1) The Board shall subject to the approval of the Cabinet Secretary, appoint a Chief Executive Officer who shall—</p> <ul style="list-style-type: none"> <li>(a) be the chief executive officer of the Commission; and</li> </ul>

	(b) be subject to the directions of the Board, responsible for the day to day management of the Commission.
	(2) The appointment of the Chief Executive Officer under this section shall be through a competitive recruitment process.
	(3) A person is qualified for appointment as a Chief Executive Officer if such person— (a) holds a Masters’ degree from a university recognized in Kenya; (b) has at least seven year’s management experience at a senior level; (c) has at least eight years of relevant experience preferably in the film industry; and (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.
	(4) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.
<b>Corporation Secretary.</b>	<b>16.</b> (1) The Board shall appoint a Corporation Secretary on such terms and conditions as the Board may determine.
	(2) The Corporation Secretary shall perform such duties as the Board may, from time to time, assign.
<b>Conduct of business of the Commission.</b>	<b>17.</b> The conduct and regulation of the business of the Board shall be as provided in the First Schedule, but subject thereto, the Board shall regulate its own procedure and the procedure of any committee constituted under the Act.
<b>Terms of office, common seal, annual estimates and books of account.</b>	<b>18.</b> The terms of office, vacancy of office, removal from office of the members of the Board, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Commission shall be as provided in the Second Schedule.
<b>Staff of the Commission.</b>	<b>19.</b> (1) The staff of the Commission shall comprise such professional, technical, administrative and support staff as the Commission may require for the discharge of its functions.
	(2) The Commission shall, in the appointment of employees, ensure— (a) equalization of opportunity for persons with disability; (b) equalization of opportunities for the youth;

	<p>(c) that not more than two thirds of its staff are of the same gender; and</p> <p>(d) that appointments reflect ethnic and regional diversity.</p>
<b>Remuneration of members of the Commission.</b>	<b>20.</b> The Commission shall upon the advice of the Salaries and Remuneration Commission, pay its members of the Board such remuneration, fees or allowances for expenses as it may determine.
<b>Protection from personal liability.</b>	<b>21.</b> A matter, thing or an act done by a member of the Board or an officer, employee or agent of the Commission shall not, if the matter or thing is done for executing the functions, powers or duties of the Commission, render the members of the Board, officer, employee or agent or any person acting on lawful directions of the Commission personally liable to any action, claim or demand whatsoever.
<b>Liability of Commission for damages.</b>	<b>22.</b> This Act shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.
<b>Funds of the Commission.</b>	<b>23.</b> (1) The funds of the Commission shall consist of— <ul style="list-style-type: none"> <li>(a) funds allocated by Parliament for purposes of the Commission;</li> <li>(b) any grants, gifts, donations or other endowments given to the Commission;</li> <li>(c) any revenues generated from any proprietary interest held by the Commission, whether movable or immovable;</li> <li>(d) interest from bank deposits; and</li> <li>(e) such funds or assets as may vest in the Commission in the performance of its functions under this Act or any other written law.</li> </ul>
	(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed to the National Assembly and made public before use.
<b>Delegation of powers or functions to committees or agents.</b>	<b>24.</b> (1) The Commission may, by resolution either generally or in any particular case delegate to any committee of the Commission or to any member, officer, employee, self-regulated organization or agent of the Commission, the

	exercise of any of the powers or the performance of any of its functions or duties.
	(2) Every such committee, officer, employee, self-regulated organisation or agent shall be appointed by the Commission in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.
	(3) The Commission may at any time revoke a delegation under this section.
	(4) A delegation conferred under this section shall not prevent the Commission from performing the delegated function.
	(5) In this section, a self-regulated organisation means an organisation whose object is to regulate the operations of its members or the users of its services and includes the organisations that may be recognised as such by the Commission.
<b>Kenya Film Academy</b>	
<b>Interpretation.</b>	<b>25.</b> In this part— “ <b>Board</b> ” means the Board of Directors of the Commission appointed under section 14 of this Act; and “ <b>former School</b> ” means the institution known as the Kenya Film School. “ <b>Director</b> ” means the Director of the Kenya Film Academy appointed under section 31.
<b>Establishment of the Kenya Film Academy.</b>	<b>26.</b> There is established the Kenya Film Academy which shall— (a) vest its management and governance in the Board of the Commission; and (b) be a centre of excellence for talent-based training and capacity building in the film industry.
<b>Functions of the Academy.</b>	<b>27.</b> The Academy shall— (a) offer training in cinematic and performing arts for the film industry; (b) avail opportunities for film talented individuals to realize their potential in cinematic and performing arts;

	<ul style="list-style-type: none"> <li>(c) produce and disseminate products in cinematic and performing arts for education, training, infotainment and commercial purposes;</li> <li>(d) provide and advance education and training to appropriately qualified candidates, leading to the award of certificates and diplomas and such other qualifications as the Academy in consultation with the Commission may, from time to time prescribe;</li> <li>(e) conduct examinations for such academic awards as the Commission may, from time to time prescribe;</li> <li>(f) develop an institution of excellence in teaching, training, entrepreneurship, innovation, research and consultancy services;</li> <li>(g) participate in resource generative services or commercial ventures and other activities for the benefit of the Academy, the community and other stakeholders;</li> <li>(h) develop and provide educational, cultural, professional, technical and vocational services to the community and in particular foster corporate social responsibility in the development of cinematic and performing arts;</li> <li>(i) foster the welfare of all staff and students; and</li> <li>(j) perform such other acts or things as the Academy may consider necessary, conducive or incidental to objects for which the Academy is established.</li> </ul>
<b>Power of the Board.</b>	<b>28.</b> The Board shall formulate policies for the administration and management of the Academy.
<b>Transitional provisions.</b>	<b>29.</b> (1) The annual estimates approved for the former School in respect of the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Academy for the remainder of the financial year but those estimates may be varied by the Cabinet Secretary, in consultation with the Board.
	(2) All the members of staff of the Kenya Film School employed at the time of commencement of this Act shall become employees of the Board subject to such terms and conditions as the Board shall determine.
	(3) Despite subsection (2), all the members of staff of the Kenya Film School immediately before the commencement

	of this Act shall, upon the commencement of this Act be given an option to serve in the Academy and if not appointed by the Board be redeployed in the Public Service.
<b><i>Kenya Film Fund</i></b>	
<b>Establishment of the Kenya Film Fund.</b>	<b>30.</b> (1) There is established the Kenya Film Fund which shall be managed and administered by the Commission.
	(2) The object and the purpose of the Fund shall be to support the promotion, development and growth of the local film industry by— <ul style="list-style-type: none"> <li>(a) supporting capacity building;</li> <li>(b) development of film industry infrastructure;</li> <li>(c) the development and preservation of film locations;</li> <li>(d) funding local production;</li> <li>(e) enhancing marketing and distribution of films;</li> <li>(f) promoting film festivals in the country;</li> <li>(g) facilitating co-production agreements and treaties; and</li> <li>(h) promoting films of historical and cultural merit.</li> </ul>
	(3) The Kenya Film Fund consists of— <ul style="list-style-type: none"> <li>(a) such monies as may be appropriated by Parliament for that purpose;</li> <li>(b) donations, grants and loans;</li> <li>(c) percentage of license fees collected in the film sector;</li> <li>(d) interests from bank deposits; and</li> <li>(e) all other monies lawfully received or made available to the Fund as the Cabinet Secretary may approve.</li> </ul>
<b>Regulations.</b> <i>No. 18 of 2012</i>	<b>31.</b> (1) For the avoidance of doubt, the Fund shall be managed in accordance with the Public Finance Management Act, 2012.
	(2) The Cabinet Secretary for the National Treasury may prescribe regulations for the management and resourcing of the Fund.
<b><i>Kenya Film Classification Board</i></b>	

<p><b>Establishment of the Kenya Film Classification Board.</b></p>	<p><b>32.</b> (1) There is established the Kenya Film Classification Board, hereinafter referred to as the Board.</p>
	<p>(2) The Board shall be a body corporate with perpetual succession, a common seal and shall in its corporate name be capable of—</p> <ul style="list-style-type: none"> <li>(a) suing and being sued;</li> <li>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;</li> <li>(c) borrowing and lending money; and</li> <li>(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.</li> </ul>
	<p>(3) Except as otherwise provided in this Act, the Board shall be independent in the performance of its functions, exercise of its powers and shall not be subject to the direction or control of any person or authority.</p>
<p><b>Members of the Board of Directors.</b></p>	<p><b>33.</b> (1) The management of the Board shall vest in a Board of Directors which shall consist of—</p> <ul style="list-style-type: none"> <li>(a) a Chairperson appointed by the President;</li> <li>(b) the Principal Secretary of the Ministry for the time being responsible for the film industry or his or her authorized representative;</li> <li>(c) the Principal Secretary to the National Treasury or his or her authorized representative;</li> <li>(d) one representation of the body representing film industry practitioners in the country;</li> <li>(e) five other persons, who shall be appointed by the Cabinet Secretary; and</li> <li>(f) the Chief Executive Officer of the Board, who shall be an <i>ex-officio</i> member.</li> </ul>
	<p>(2) In making the appointments under (1)(e) the Cabinet Secretary shall appoint members by virtue of their knowledge and experience in matters relating to—</p> <ul style="list-style-type: none"> <li>(a) finance and accounting;</li> <li>(b) film and creative arts;</li> <li>(c) law; or</li> <li>(d) communications and technology.</li> </ul>



	<p>(3) A person is qualified for appointment as the Chairperson or a member of the Board if such person—</p> <ul style="list-style-type: none"><li>(a) is a citizen of Kenya;</li><li>(b) holds a degree from a university recognized in Kenya;</li><li>(c) has in the case of the Chairperson, at least eight years, or in the case of a member, at least six years’ professional experience preferably in the film industry; and</li><li>(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.</li></ul>
<p><b>Functions of the Board.</b></p>	<p><b>34.</b> (1) The function of the Board is to regulate the creation, broadcasting, distribution and exhibition of films by—</p> <ul style="list-style-type: none"><li>(a) issuing licenses to film makers, distributors and exhibitors;</li><li>(b) registering film agents for purposes of this Act;</li><li>(c) classifying films in the following categories—<ul style="list-style-type: none"><li>(i) films for General Exhibition (GE);</li><li>(ii) films that require Parental Guidance to children under the age of ten years (PG 10);</li><li>(iii) films that require Parental Guidance to children under the age of thirteen years (PG 13);</li><li>(iv) films that are unsuitable for children under the age of sixteen years (16);</li><li>(v) films that are strictly for adults only (18);</li><li>(vi) films that are restricted; or</li><li>(vii) films that are prohibited;</li></ul></li><li>(d) classify film posters as—<ul style="list-style-type: none"><li>(i) approved for public display; or</li><li>(ii) not approved for public display.</li></ul></li><li>(e) classify commercials as-<ul style="list-style-type: none"><li>(i) suitable for watershed period;</li><li>(ii) unsuitable for watershed period; or</li><li>(iii) prohibited.</li></ul></li><li>(f) develop a national catalogue of classified films;</li><li>(g) giving consumer advice having due regard to the protection of women, children and other vulnerable members of society against sexual exploitation or degradation and safeguarding their privacy and identity in film content; and</li></ul>

	(h) advise on and promote the consumption of classified films online in order to protect the safety of children online.
	(2) Where a film has been classified in accordance with this Act the classification label shall be conspicuously displayed on or through the cover or packaging; or before commencement of any program, promotional materials, and adverts of the film on broadcast media.
	(3) A person who fails to display a classification label in accordance with subsection (2) commits an offence.
	(4) A person must not possess, offer for sale, distribute or exhibit any film at an exhibition to which the public are admitted, unless; <ul style="list-style-type: none"> <li>(a) that person, is registered with the Board as a distributor or exhibitor of films; and</li> <li>(b) the film, has been classified by the Board under this Act.</li> </ul>
	(5) A person who offers for sale, exhibits, distributes any film, in contravention of subsection (4) commits an offence.
	(6) A distributor or exhibitor of the film may, after a period of one year from the date when the film was first classified in terms of this Act, apply, in the prescribed manner, for re-classification of that film.
	(7) A distributor or exhibitor of the film may apply for re-classification of that film after a period of one year from the date when the film was first classified in terms of this Act.
<b>Powers of the Board.</b>	<b>35.</b> (1) The Board shall have all the powers necessary for the performance of its functions under this Act.
	(2) Without prejudice to the generality of subsection (1), the Board shall have the power to— <ul style="list-style-type: none"> <li>(a) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made and the fees payable in respect of such application;</li> <li>(b) exempt, in writing or through a notice in the <i>Gazette</i>, from the provisions of this Part any film, or any class</li> </ul>

	<p>of films, generally or by reference to the person or class of persons making the film or films;</p> <p>(c) prescribe film licensing regulations and guidelines; and</p> <p>prescribe guidelines for the classification of films.</p>
	<p>(3) Subject to the provisions of this Act, a person shall not make a film in Kenya except and in accordance with the terms and conditions of a filming license issued under this Part if the film is made for purposes of—</p> <p>(a) public exhibition;</p> <p>(b) broadcasting;</p> <p>(c) distribution; and</p> <p>hire or sale.</p>
	<p>(4) All persons involved in the making of a film in contravention of the provisions of subsection (3) commit an offence.</p>
<b>Chief Executive Officer.</b>	<p><b>36.</b> (1) The Board shall subject to the approval of the Cabinet Secretary, appoint a Chief Executive Officer who shall—</p> <p>(c) the chief executive officer of the Commission; and</p> <p>be, subject to the directions of the Board, responsible for the day to day management of the Commission.</p>
	<p>(2) The appointment of the Chief Executive Officer under his section shall be through a competitive recruitment process.</p>
	<p>(3) A person is qualified for appointment as a Chief Executive Officer if such person—</p> <p>(a) holds a Masters’ degree from a university recognized in Kenya;</p> <p>(b) has at least seven year’s management experience at a senior level;</p> <p>(c) has at least eight years of relevant experience preferably in the film industry; and</p> <p>(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.</p>
	<p>(4) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.</p>
<b>Corporation Secretary.</b>	<p><b>37.</b> (1) The Board of Directors shall appoint a Corporation Secretary on such terms and conditions as the Board of Directors may determine.</p>

	(2) The Corporation Secretary shall perform such duties as the Board may, from time to time, assign.
<b>Requirement to display license</b>	<b>38.</b> A holder of a license for sale, exhibition and distribution shall display the license in a conspicuous part of the premises where the sale, exhibition or distribution is to take place.
<b>Conduct of business of the Board.</b>	<b>39.</b> The conduct and regulation of the business of the Board of Directors shall be as provided in the First Schedule, but subject thereto, the Board of Directors shall regulate its own procedure and the procedure of any committee constituted under the Act.
<b>Terms of office, common seal, Annual estimates, books of account.</b>	<b>40.</b> The terms of office, vacancy of office, removal from office of the members of the Board, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Board of Directors shall be as provided in the Second Schedule.
<b>Staff of the Board.</b>	<b>41.</b> (1) There shall be a secretariat of the Board which shall comprise such professional, technical, administrative and support staff as the Board may require for the discharge of its functions.
	(2) The Board shall, in the appointment of employees, ensure— (a) equalization of opportunity for persons with disability; (b) equalization of opportunities for the youth; (c) that not more than two thirds of its staff are of the same gender; and (d) that appointments reflect ethnic and regional diversity.
<b>Remuneration of members of the Board.</b>	<b>42.</b> The Board shall upon the advice of the Salaries and Remuneration Commission, pay its Directors of the Board such remuneration, fees or allowances for expenses as it may determine.
<b>Protection from personal liability.</b>	<b>43.</b> A matter, thing or an act done by a Director of the Board or an officer, employee or agent of the Board shall not, if the matter or thing is done for executing the functions, powers or duties of the Board, render the members of the Board of Directors, officer, employee or agent or any person acting on lawful directions of the Board personally liable to any action, claim or demand whatsoever.

<p><b>Liability of the Board for damages.</b></p>	<p><b>44.</b> This Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.</p>
<p><b>Funds of the Board.</b></p>	<p><b>45.</b> (1) The funds of the Board shall consist of—</p> <ul style="list-style-type: none"> <li>(a) funds allocated by Parliament for purposes of the Board;</li> <li>(b) any grants, gifts, donations or other endowments given to the Board;</li> <li>(c) any revenues generated from any proprietary interest held by the Board, whether movable or immovable;</li> <li>(d) interest from bank deposits;</li> <li>(e) such funds or assets as may vest in the Board in the performance of its functions under this Act or any other written law; and</li> <li>(f) a portion of monies from licensing fees charged by the Board.</li> </ul>
	<p>(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed to the National Assembly and made public before use.</p>
<p><b>Delegation of powers or functions to committees or agents.</b></p>	<p><b>46.</b> (1) The Board of Directors may by resolution either generally or in any particular case delegate to any committee of the Board or to any member, officer, employee, self-regulated organization or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties.</p>
	<p>(2) Every such committee, officer, employee, self-regulated organisation or agent shall be appointed by the Board of Directors in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.</p>
	<p>(3) The Board of Directors may at any time revoke a delegation under this section.</p>
	<p>(4) A delegation conferred under this section shall not prevent the Board from performing the delegated function.</p>
	<p>(5) In this section, a self-regulated organisation means an organisation whose object is to regulate the operations of its members or the users of its services and includes the organisations that may be recognised as such by the Board.</p>

<b>Decisions of the Board.</b>	<b>47.</b> (1) The Board shall within thirty days from the date of receipt of a request by an applicant, make its decision on any matter before it.
	(2) Classification decisions of the Board shall be in writing and any order given and reasons thereof shall be served upon all parties to the proceedings,
	(3) The Board shall, within seven days of making classification decision, communicate such decision to the parties involved.
	(4) All classification decisions of the Board shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.
	(5) Where the Board does not make a decision as provided in subsection (1) the appellant may appeal to the Tribunal within seven days of the expiry of the prescribed period.
<b>Appeal against a decision of the Board.</b>	<b>48.</b> (1) A person aggrieved by a decision of the Board may appeal to the 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 the appeal within that period.
<b>PART IV—MISCELLANEOUS PROVISIONS</b>	
<b>Regulations</b>	<b>49.</b> (1) The Cabinet Secretary may make regulations prescribing anything which under this Act may be prescribed, and generally for the better carrying into effect of the provisions and purposes of this Act.

	<p>(2) Without prejudice to the generality of subsection (1), the Cabinet secretary may in consultation with the Kenya Film Classification Board and the Kenya Film Commission promulgate regulations prescribing any of the following matters—</p> <ul style="list-style-type: none"> <li>(a) licensing of film makers, distributors and exhibitors;</li> <li>(b) registration of Film Agents;</li> <li>(c) regulations on the classification of films;</li> <li>(d) the identification and branding of Kenyan films;</li> <li>(e) the national repository and archive for the Kenyan film industry;</li> <li>(f) incentives to promote investment in the film industry;</li> <li>(g) management of the body representing film industry practitioners in the country;</li> <li>(h) accreditation, certification and skills recognition in the film industry in Kenya; and</li> <li>(i) any other matters as may be necessary for the promotion of the objects of this Act.</li> </ul>
<b>Licensee to furnish information.</b>	<p><b>50.</b> (1) Film makers, distributors and exhibitors shall, upon request by a relevant authority, furnish the authority with information necessary for the overseeing of activities carried out by them in relation to the production, distribution and exhibition of films</p> <p>(2) Any person who without reasonable excuse contravenes subsection (1) shall be guilty of an offence.</p>
<b>Offences by bodies corporate or their employees.</b>	<p><b>51.</b> (1) When an offence is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge or ought to have known of the commission of the offence and who did not exercise due diligence and efficiency to ensure compliance with this Act, commits an offence.</p> <p>(2) Subject to subsection (1), a person shall be personally liable for an offence, whether committed by them on their own account or as an agent of the body corporate.</p>
<b>General penalty.</b>	<p><b>52.</b> (1) Any person who is guilty of an offence under this Act shall be liable to, —</p>

	<p>(a) in the case of a body corporate, a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment; or</p> <p>(b) in the case of an individual, a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
	<p>(2) Where any person is convicted of an offence against this Act or any regulations made thereunder, then, in addition to or in lieu of any other penalty, the court by which such person is convicted may—</p> <p>(a) where the offence relates to the making of a film, order the confiscation and destruction of the film, and revoke the filming licence relating to the making of the film, whether the person convicted is the holder thereof or not; or</p> <p>(b) where the offence relates to exhibition, order the confiscation and destruction of the film, and in addition, or instead, revoke any certificate of approval, approval or permission granted under this Act.</p>
<b>Powers and functions of the National and County Governments.</b>	<b>53.</b> The powers and functions of the National and County Governments are as set out in the Fourth Schedule.
<b>PART VI—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS</b>	
<b>Repeals, revocation and savings.</b>	<b>54.</b> (1) Subject to the provisions of subsection (2), the Kenya Film Commission Order (L.N. 147/2015) and the Films and Stage Plays Act (CAP 222) are repealed.
	<p>(2) Notwithstanding the provisions of sub-section (1)—</p> <p>(a) anything done under the provisions of the Films and Stage Plays Act, or by the Cabinet Secretary under the provisions of the Films and Stage Plays Act (CAP 222) and the Kenya Film Commission Order (L.N. 147/2015) before the commencement of this Act shall be deemed to have been done under the provisions of this Act;</p> <p>(b) any statutory instrument issued by the Commission or Board, or under the provisions of the Films and Stage</p>



	<p>Plays Act, or by the Cabinet Secretary under the provisions of the Films and Stage Plays Act (CAP 222) and the Kenya Film Commission Order (L.N. 147/2015) before the commencement of this Act shall be deemed to be statutory instruments granted by the Authority under the provisions of this Act and shall remain in force until specifically revoked under this Act;</p> <p>(c) any revocation of a licence under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the Act before such revocation;</p> <p>(d) the fees existing at the commencement of this Act shall continue being in place until new fees are gazetted under this Act; and</p> <p>(e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.</p>
<b>Transitional provisions.</b>	<b>55.</b> The provisions of the Third Schedule apply.
<b>Consequential amendments</b>	<b>56.</b> The provisions of the Fifth Schedule apply.

<p><b>FIRST SCHEDULE</b></p> <p><b>PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS</b></p> <p><b>OF—</b></p> <p><b>THE KENYA FILM COMMISSION (Section 17)</b></p> <p><b>THE KENYA FILM CLASSIFICATION BOARD (Section 47)</b></p> <p><b>1. Board to meet at least four times in a year</b></p> <p>The Board, as the case may be, shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.</p> <p><b>2. The Chairperson to preside all meetings</b></p> <p>(1) The Chairperson shall preside at every meeting of the Board at which the Chairperson is present but in the absence of the Chairperson, the members of the</p>	
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Board present shall appoint a member from among their number to preside at that meeting.

(2) The Chairperson or, in the absence of the Chairperson or member of the Board appointed by the Board, as the case may be, to act in the place of the Chairperson, may at any time call a special meeting upon a written request by a majority of the members of the Board.

### **3. Notice of meeting**

Unless five members of the Board otherwise agree, at Notice of meeting of at least seven days' written notice of every meeting of the Board shall be given to every member of the Board.

### **4. Decision of the Board to be by majority**

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

### **5. Decision of the Board to be by majority**

Any member of the Board present at a meeting of the Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the opinion of that member is contrary to his advice or to law.

### **6. Member of the Board to disclose interest**

A member of the Board who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board and shall not be present during any deliberations on the matter.

### **7. The Board to cause minutes to be recorded and kept**

The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.

## 8. Quorum

(1) Subject to subsection (2), five members of the Board shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under paragraph 6, the other members present may, if they deem it expedient so to do—

- (a) postpone the consideration of that matter until there is a quorum; or
- (b) proceed to consider and decide the matter as if there was quorum.

## SECOND SCHEDULE

### **TERM OF OFFICE, VACANCY OF OFFICE, REMOVAL FROM OFFICE, BOOKS OF ACCOUNTS AND MEMBERS OF THE BOARD, THE COMMON SEAL, FINANCIAL YEAR, ANNUAL ESTIMATES AND BOOKS OF ACCOUNTS, RECORDS, AUDIT AND REPORTS OF THE KENYA FILM COMMISSION (Section 18); AND THE KENYA FILM CLASSIFICATION BOARD (Section 48)**

#### 1. Term of office

(1) A member of the Commission or the Board as the case may be, shall hold office, in the case of—

- (a) the Chairperson and Vice-Chairperson, for a period of four years; and
- (b) a member for a period of three years.

(2) The Chairperson, Vice-Chairperson and members shall be eligible for reappointment for one further term.

(3) The Chairperson, Vice-Chairperson, and members shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

#### 2. Gender balance and regional and ethnic balance

Appointments under this Act shall take into account the principle that the composition of the Commission and the Board as the case may be taken as a whole, shall reflect gender balance as well as regional and ethnic diversity of the people of Kenya.

#### 3. Vacancy of office of Chairperson, vice Chairperson, or members

(1) The office of the Chairperson, Vice-Chairperson or member, as the case may be, shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the President or the Cabinet Secretary, as the case may be, resigns from office; or
- (c) is removed from office under any of the circumstances specified in paragraph 4 of this schedule.

(2) The President or the Cabinet Secretary, as the case may be, shall notify every resignation, vacancy or termination in the *Gazette* within fourteen days.

**4. Removal of Chairperson, vice Chairperson and members**

(1) A Chairperson, Vice Chairperson, or member (other than an ex officio member), may be removed from office on account of any of the following—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) being absent from three consecutive meetings of the Commission or Board, as the case may be, without reasonable cause;
- (e) failure to disclose to the Commission or Board any interest in any contract or matter before the Commission or Board;
- (f) being convicted of a criminal offence;
- (g) incompetence; or
- (h) bankruptcy.

**5. Removal from office**

(1) The Chief Executive Officer or Corporation Secretary as the case may be, may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—

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

(2) Before the Chief Executive Officer or Corporation Secretary, as the case may be, is removed under subparagraph (1), the Chief Executive Officer or Corporation Secretary, shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

**6. Financial year**

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

**7. Annual estimates**

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

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission or Board, as the case may be, for the financial year, and in particular but not limited to—

- (a) the payment of salaries or allowances and other expenses in respect of the staff of the Commission or Board and the members; and
- (b) any other expenditure that may be necessary for the carrying out of their respective objects and functions under the Act.

(3) The annual estimates shall be approved by the Commission or Board as the case may be, before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary who, after approving it, shall forward it to the Cabinet Secretary of the National Treasury.

(4) After the Cabinet Secretary's approval, the Commission or Board as the case may be, shall not increase the annual estimates without the consent of the Cabinet Secretary.

**8. Books of accounts, records, audit and reports**

(1) The Commission or Board as the case may be, shall keep or cause to be kept proper books of accounts recording all the income and liabilities, expenditure assets, undertakings, funds, activities, contracts, transactions and any other business of the Commission or Board respectively.

(2) The Commission or Board, as the case may be, shall ensure that all monies received are properly 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 under this Act.

(3) Within a period of three months after the end of each financial year, the Commission or Board, as the case may be, shall prepare annual financial statements in accordance with the provisions of section 81 of the Public Financial Management Act, No 18 of 2012, and submit them to the Controller of Budget and the Auditor-General or to an auditor appointed under subparagraph (4), for audit.

(4) The auditor referred to in subparagraph (3) shall be appointed by the Commission or Board, as the case may be, with the written approval of the Auditor-General.

(5) The appointment of an auditor shall not be terminated by the Commission or Board, as the case may be, without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under subparagraph (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Auditor General on any matter relating to the directions given under subparagraph (6).

(8) Within a period of six months after the end of the financial year, the Auditor General shall report on the examination and audit of the accounts of the Commission or Board as the case may be, to the Commission or Board as the case may be, and to the Cabinet Secretary, and in the case of an auditor appointed under subparagraph (4), the auditor shall submit a copy of the report to the Auditor-General.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Commission or Board, as the case may be, accounts or records whenever it appears to him to be desirable and the Auditor-General shall carry out such inspection at least once every six months.

(10) Notwithstanding anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matter incidental to his or her powers under this Act, and the provisions of the Public Financial Management Act No. 18/2012, on the same issue shall apply to any report made under this section.

(11) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him or her under this section.

(12) The fee for any auditor, not being a public officer, shall be determined and paid by the Commission or Board, as the case may be.

(13) The Commission or Board, as the case may be, shall prepare a report for each quarter not later than fifteen days after the end of each quarter and submit it to the Cabinet Secretary who shall, upon approving it, forward a copy to the Cabinet Secretary of the National Treasury.

(14) The Authority, Tribunal, Corporation or Agency, as the case may be, shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board from time to time.

#### **9. The common seal**

(1) The common seal of the Commission or Board, as the case may be, shall be kept in such custody as the Commission or Board, as the case may be, may direct and shall not be used except on the order of the Commission or Board respectively.

(2) The common seal of the Commission or Board, as the case may be, when affixed on a document and duly authenticated shall be judicially and officially noticed

unless and until the contrary is proved any necessary order or authorization by the Commission or Board, as the case may be, under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Commission or Board, as the case may be, shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Commission or Board, as the case may be, may be authenticated by the signature of the Chairperson or the Chief Executive Officer:

Provided that the Commission or Board, as the case may be, shall, in the absence of either the Chairperson or the Chief Executive Officer nominate one member to authenticate the seal on behalf of the Chairperson or the Chief Executive Officer.

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THIRD SCHEDULE  
[Section 63]

**TRANSITIONAL PROVISIONS**

**1. KENYA FILM COMMISSION**

Kenya Film Commission established under section 11 to be successor to the Kenya Film Commission established under Legal Notice 147 of 2015.

- (1) The Kenya Film Commission shall be the successor to the Kenya Film Commission established under the State Corporations Act, vide Legal Notice No. 147 of 2015 and subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Film Commission existing at the commencement of this Act shall be automatically and fully transferred to the Kenya Film Commission and any reference to the Kenya Film Commission in any contract or document shall, for all purposes, be deemed to be a reference to the Kenya Film Commission established under section 11.
- (2) The persons who at the commencement of this Act are the Chairperson, Commissioners, Chief Executive Officer or Corporation Secretary of the Kenya Film Commission shall become Chairperson, members of the Board, Chief Executive Officer or Corporation Secretary respectively, as the case may be, of Commission for the remainder of their tenure in accordance with their appointment under the revoked Legal Notice.
- (3) For the greater certainty and subject to subparagraph (b), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Board, as the case may be, as if they were appointed under section 14.

- (4) Every person who at the commencement of this Act is an employee of the Kenya Film Commission, not then being under notice of dismissal or resignation shall, on that day and subject to this Act, become an employee of the Kenya Film Commission established under section 11 on the same terms and conditions.

## **2. KENYA FILM CLASSIFICATION BOARD**

Kenya Film Classification Board established under section 40 to be successor to the Kenya Film Classification Board established under section 11 of the Films and Stage Plays Act (CAP 222).

- (1) The Kenya Film Classification Board established under section 40 of this Act shall be the successor to the Kenya Film Classification Board established under the Films and Stage Plays Act (CAP 222) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Film Classification Board existing at the commencement of this Act shall be automatically and fully transferred to the Kenya Film Classification Board and any reference to the Kenya Film Classification Board in any contract or document shall, for all purposes, be deemed to be a reference to the Kenya Film Classification Board established under section 40.
- (2) The persons who at the commencement of this Act are the Chairperson, Board members, Chief Executive Officer or Corporation Secretary of the Kenya Film Classification Board shall become Chairperson, members of the Board, Chief Executive Officer or Corporation Secretary respectively, as the case may be, of the Board for the remainder of their tenure in accordance with their appointment under the repealed Act.
- (3) For the greater certainty and subject to subparagraph (b), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Board, as the case may be, as if they were appointed under section 44.
- (4) A person who at the commencement of this Act is an employee of the Kenya Film Classification Board, not then being under notice of dismissal or resignation shall, on that day and subject to this Act, become an employee of the Kenya Film Classification Board established under section 11 on the same terms and conditions.