

No. 22 of 2009.

*National Economic and Fiscal Commission (Amendment) Act 2009.*

Certified on : 20.05.10



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*National Economic and Fiscal Commission (Amendment) Act 2009.*

**ARRANGEMENT OF SECTIONS.**

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## AN ACT

entitled

### *National Economic and Fiscal Commission (Amendment) Act 2009,*

Being an Act to amend the *National Economic and Fiscal Commission Act 1996*,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

#### **1. INTERPRETATION (AMENDMENT OF SECTION 2).**

Section 2 of the Principal Act is amended by -

- (a) repealing the definition of "Acting Chairman" and substituting the following new definition:-

"Acting Chairman" means the member of the Commission holding office as the Acting Chairman of the Commission in accordance with Section 19;" and

- (b) repealing the definition of "Deputy Chairman"; and
- (c) inserting immediately after the definition of "Chief Executive Officer" the following new definition:-

"document" includes any record of information, however recorded or stored whether in written or printed form, or film, by electronic means or otherwise;" and

- (d) repealing the definition of "*ex-officio* member"; and
- (e) repealing the definition of "the Chairman" and substituting the following new definition:-

"the Chairman" means the Chairman of the Commission;" and

- (f) deleting the words "and constituted" from the definition of "the Commission".

9. Repeal and replacement of Section 19.

**"19. ACTING CHAIRMAN."**

10. Consultants (Amendment of Section 26).
11. Reports (Amendment of Section 28).
12. Amendment of Schedule 1.
13. Repeal of Schedule 2.



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**2. THE NATIONAL ECONOMIC AND FISCAL COMMISSION  
(AMENDMENT OF SECTION 3).**

Section 3 of the of Principal Act is amended by deleting "Section 117(2) of the *Organic Law*" and substituting "Section 3B".

**3. REPEAL AND REPLACEMENT OF SECTION 4.**

The Principal Act is amended by repealing Section 4 and substituting the following new sections:-

**"3A. FUNCTIONS OF THE COMMISSION.**

"In addition to the functions referred to in Section 187H (1) (*national economic and fiscal commission*) of the *Constitution*, the Commission has the following functions:-

- (a) to perform the functions conferred on the Commission by the *Intergovernmental Relations (Functions and Funding) Act 2009*;
- (b) to inquire into and report to the Minister about any matter relating to intergovernmental finances referred to the Commission by the Minister;
- (c) to provide advice to the Minister about any matter relating to intergovernmental finances, as requested by the Minister;
- (d) to undertake, on its own initiative, research about any matter relating to intergovernmental finances and to publish its research findings;
- (e) to perform any other function conferred on the Commission by or under any other law;
- (f) to do anything incidental to any of the preceding Functions."

**"3B. MEMBERSHIP OF THE COMMISSION.**

"The Commission consists of a Chairman and 2 other members."

**"3C. APPOINTMENT OF CHAIRMAN OF THE COMMISSION.**

(1) The Head of State, acting on the advice of the National Executive Council, shall appoint the Chairman of the Commission by notice in the National Gazette.

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(2) The Minister shall consult with the Provincial Governments before making a submission to the National Executive Council recommending the appointment of a person as the Chairman.

(3) A person shall not be recommended for appointment as the Chairman unless the person has qualifications and experience relevant to the functions of the Commission.

(4) The Chairman shall be appointed on a full-time basis.

(5) The Chairman shall be appointed for a period not exceeding 4 years and is eligible for reappointment as the Chairman.

(6) For the avoidance of doubt, if a person who has been the Chairman is not reappointed as the Chairman, the person may be considered for appointment as a member of the Commission in accordance with Section 3D.

(7) Part III of this Act contains other provisions relevant to the office of the Chairman."

**"3D. APPOINTMENT OF OTHER MEMBERS OF THE COMMISSION.**

(1) The Head of State, acting on the advice of the National Executive Council, shall appoint the other members of the Commission by notice in the National Gazette.

(2) The Minister shall consult with the Chairman of the Commission and the Provincial Governments before making a submission to the National Executive Council recommending the appointment of a person as a member.

(3) A person shall not be recommended for appointment as a member unless the person has qualifications and experience relevant to the functions of the Commission.

(4) A member shall be appointed on a part-time basis.

(5) A member shall be appointed for a period not exceeding 4 years and is eligible for reappointment."



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**"4. CONDITIONS OF APPOINTMENT OF MEMBERS OTHER THAN THE CHAIRMAN.**

(1) This section applies to members of the Commission, other than the Chairman of the Commission.

(2) The Minister shall by notice in the National Gazette determine the terms and conditions of appointment of members.

(3) The Commission shall meet the reasonable expenses of traveling and accommodation for members on the business of the Commission.

(4) The traveling and accommodation expenses referred to in Subsection (3), shall be within such reasonable limits as are determined by the Chairman and notified in writing by the Chairman in advance to each member."

**4. REPEAL AND REPLACEMENT OF SECTION 5**

The Principal Act is amended by repealing Section 5 and substituting the following new section:-

**"5. RESIGNATION OF MEMBERS OTHER THAN THE CHAIRMAN.**

A member of the Commission, other than the Chairman, may resign his office by written notice to the National Executive Council."

**5. VACATION OF OFFICE (AMENDMENT OF SECTION 6).**

Section 6 of the Principal Act is amended -

(a) in Subsection (1) by deleting the words "or an *ex-officio* member"; and

(b) in Subsection (2) by deleting the words "and an *ex-officio* member".

**6. REPEAL AND REPLACEMENT OF SECTION 9.**

The Principal Act is amended by repealing Section 9 and substituting the following new sections:-

**"9. MEETINGS OF THE COMMISSION.**

(1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman shall convene the meetings of the Commission.

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**"9A. PROCEDURES AT MEETINGS OF THE COMMISSION.**

(1) The Chairman shall preside at all meetings of the Commission.

(2) At a meeting of the Commission a quorum is constituted by the Chairman and one other member.

(3) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(4) The Chairman presiding at a meeting has a deliberative vote and, if in relation to a matter the votes are equal, also has a casting vote.

(5) Subject to this section, the Chairman shall determine the procedures for the meetings of the Commission.

(6) The Chairman shall cause minutes of the meetings of the Commission to be recorded and kept."

**7. DECLARATION OF OFFICE (AMENDMENT OF SECTION 10).**

Section 10 of the Principal Act is amended by deleting the words "the Head of State or a person appointed by the Head of State for the purpose" and substituting the words "a Commissioner for Oaths".

**8. REPEAL AND REPLACEMENT OF SECTIONS 12 AND 13.**

The Principal Act is amended by repealing Sections 12 and 13, and substituting the following new sections:-

**"12. ACCESS TO INFORMATION.**

(1) The Commission is entitled to have access to any book, paper or document in the possession, or under the control, of all or any of the following:-

- (a) the National Government, a Provincial Government or a Local-level Government; or
- (b) a body established by or under an Act of the Parliament, or a law of a Provincial Government or a Local-level Government; or
- (c) a company in which the National Government; or



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a Provincial Government or a Local-level Government, is a shareholder or has a financial interest; or

(d) any other company,

if such access is reasonably necessary for the proper performance of the functions of the Commission.

(2) The Commission is entitled to make copies or extracts from any book, paper or document referred to in Subsection (1)."

**"13. GIVING OF FALSE EVIDENCE.**

(1) A person shall not make a statement to the Commission that he knows to be false or misleading in a material particular.

(2) A person shall not provide the Commission with any book, paper or document, or a copy of, or extract from, any book, paper or document, that he knows to be false or misleading in a material particular.

(3) A person who contravenes Subsection (1) or (2) is guilty of an offence.

Penalty: A fine not exceeding K 5,000.00 or a term of imprisonment not exceeding one year."

**9. REPEAL AND REPLACEMENT OF SECTION 19.**

The Principal Act is amended by repealing Section 19 and substituting the following:-

**"19. ACTING CHAIRMAN.**

(1) If the Chairman is -

- (a) on leave of absence; or
- (b) absent from the country; or
- (c) out of speedy and effective communication; or
- (d) otherwise unable to perform, or is not readily available to perform the duties of his office,

the Chairman shall, in writing, appoint one of the members of the Commission to be the Acting Chairman of the Commission.

(2) The member appointed as the Acting Chairman shall exercise the powers and perform the functions and responsibilities of the Chairman."

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**10. CONSULTANTS (AMENDMENT OF SECTION 26).**

Section 26 of the Principal Act is amended by deleting the word “employ” and substituting the word “engage”.

**11. REPORTS (AMENDMENT OF SECTION 28).**

Section 28 of the Principal Act is amended by adding at the end the following subsection:-

“(3) The Commission shall also prepare a fiscal report in accordance with Section 69 of the *Intergovernmental Relations (Functions and Funding) Act 2009*.”.

**12. AMENDMENT OF SCHEDULE 1.**

Schedule 1 of the Principal Act is amended by adding at the end the following words:-

“Made this      day of      2008  
before  
[insert Commissioner’s details]  
A Commissioner for Oaths”.

**13. REPEAL OF SCHEDULE 2.**

The Principal Act is amended by repealing Schedule 2.

I hereby certify that the above is a fair print of *National Economic and Fiscal Commission (Amendment) Act 2009* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *National Economic and Fiscal Commission (Amendment) Act 2009* was made by the National Parliament on 11 March 2009.

Speaker of the National Parliament.