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THE ANTI-DOPING BILL, 2016

A Bill for

AN ACT of Parliament to provide for the implementation of the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport; the regulation of sporting activities free from the use of prohibited substances and methods in order to protect the health of athletes; the establishment and management of the Anti-Doping Agency and to provide for the Agency's powers, functions and management and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Anti-Doping Act, 2016. Short title and Commencement.

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

“accredited laboratory” means a laboratory approved by the World Anti-doping Agency to test samples for the presence of prohibited substances in accordance with International Standards;

“administration” means providing, supplying, supervising, facilitating, or otherwise participating in the use or attempted use by another person of a prohibited substance or prohibited method;

Provided that it shall not include the actions—

- (a) of bona fide medical personnel involving a prohibited substance or prohibited method used for genuine and legal therapeutic purposes or other acceptable justification; and
- (b) involving a prohibited substance which is not prohibited in out-of-competition testing unless the circumstances as a whole demonstrate that such a prohibited substance is not intended for genuine and legal therapeutic purposes or is intended to enhance sport performance;

“Agency” means the Anti-Doping Agency of Kenya established under section 5;

“Anti-Doping Administration and Management System” means a web-based database management tool for data entry, storage, sharing and reporting designed to assist stakeholders and the World Anti-doping Agency in anti-doping operations;

“athlete support personnel” includes a coach, trainer, manager, agent, team staff, official, medical or paramedical personnel, parent or any other person working with, treating or assisting an athlete participating in or preparing for a sport competition;

“attempt” means purposely engaging in conduct that constitutes a substantial step planned to culminate in the commission of a prohibited activity:

Provided that there shall be no commission of a prohibited activity based solely on an attempt to commit a prohibited activity if the person renounces the attempt prior to it being discovered by a third party not involved in the attempt;

“Board” means the board of Anti-Doping Agency of Kenya established under section 10;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to sport;

“Convention” means the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sport;

“Code” means the World Anti-doping Code that has been adopted by sports organizations, international sports federations and national anti-doping organizations to regulate doping in sports;

“Committee” means the Therapeutic Use Committee established under section 23 of the Act;

“Court of Arbitration for Sport” means a court set up by the International Council of Arbitration for Sport;

“competition” means a single race, match, game or singular sport contest;

“complicity” means assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional act or omission involving an anti-doping rule violation, an attempted anti-doping rule violation or

violation of Article 10.12.1 of the World Anti-Doping Code by another person;

“doping” means the use of prohibited substances and methods in any sporting activity whether competitive or recreational in order to artificially enhance performance;

“doping control” means the steps and processes commencing with test distribution planning to the disposition of any appeal including steps and processes such as provision of whereabouts information, sample collection and handling, laboratory analysis, therapeutic use exemptions, results management and hearings;

“event” means a series of separate competitions conducted together under one ruling body;

“in-competition” means the period commencing twelve hours before a competition in which the athlete is scheduled to participate through the end of such competition and the sample collection process related to such competition, unless provided otherwise in the rules of an international federation or the body in charge of an event;

“international-level athlete” means an athlete who competes in sport at the international level, as defined by each international federation, consistent with the International Standard for Testing and Investigations;

“International Olympic Committee” means the organization created by the Congress of Paris on June 23, 1894 and entrusted with the control and development of the modern Olympic Games;

“International Paralympic Committee” means the organization established on September 22, 1989, to enable paralympic athletes to achieve sporting excellence and to inspire and excite the world and entrusted with the control and development of the Paralympic Games;

“International Standard” means a standard adopted by the World Anti-Doping Agency in support of the Code and includes any technical documents issued pursuant to the International Standard;

“licence” means a certificate issued to a professional sports body, coach, agent, or a professional sports person for purposes of carrying out the activities of the relevant sport;

“marker” means a compound, group of compounds or biological variables that indicates the use of a prohibited substance or prohibited method;

“member” includes the Chairperson and members of the Board established under section;

“metabolite” means any substance produced by a biotransformation process;

“minor” means a natural person who has not reached the age of eighteen years;

“National Anti-Doping Organization” means the entity designated by each country as possessing the primary authority and responsibility to adopt and implement Anti-doping Rules, direct the collection of samples, the management of test results, and the conduct of hearings at the national level and where this designation has not been made by the competent public authorities, the entity shall be the country’s National Olympic Committee or its designee;

“national-level athlete” means a person, other than an international-level athlete, who is designated by the Agency, or the national anti-doping agency of another country, as being within the Registered Testing Pool of the Agency or that national anti-doping organization, as the case may be;

“national sports organization” includes an umbrella body responsible for Olympic, non-Olympic, Paralympic or Deaflympic sports or multi-sport organization responsible for all sports disciplines or recreational bodies or body responsible for a particular sport nationally and it may be affiliated to an international federation or not;

“out-of-competition testing” means the collection and testing of a sample from an athlete for the purpose of doping control procedures while the athlete is out-of-competition;

“participant” means any athlete or athlete support person;

“possession” means the actual and physical possession, or the constructive possession:

Provided that—

- (a) if the person does not have exclusive control over the prohibited substance or prohibited method or the premises in which a prohibited substance or prohibited method exists, constructive possession shall only be found if the person knew about the presence of the prohibited substance or prohibited method and intended to exercise control over it; and
- (b) there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the person has committed an anti-doping rule violation, the person has taken concrete action demonstrating that the person never intended to have possession and has renounced possession by explicitly declaring it to an Anti-Doping Organization; and
- (c) the purchase of a prohibited substance or prohibited method constitutes possession by the person who makes the purchase;

“professional sports” means sports for which a contract for engagement and remuneration has been entered into by a club or sports organization and the professional sports persons;

“professional sports person” means a person who is, on the basis of a contract for engagement and remuneration, preparing or training for the purposes of participating in the relevant sports competition at national or international level;

“prohibited association” means association by an athlete or other person subject to the authority of the Agency in a professional or sport related capacity with any athlete support person who if subject to the authority of the Agency, is serving a period of ineligibility; or if not subject to the authority of the Agency, and where ineligibility has not been addressed in a results management process pursuant to the Code, has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of Anti-doping Rules if Code-compliant rules had been applicable to such person;

“Prohibited List” means the list developed by the World Anti-doping Agency for purposes of identifying the prohibited substances and prohibited methods;

“prohibited method” means any method so described on the prohibited list;

“prohibited substance” any substance, or class of substances, so described on the Prohibited List;

“recreation” means voluntary participation in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills of an individual;

“Registered Testing Pool” means the pool of highest-priority athletes established separately at the international level by International Federations and at the national level by National Anti-Doping Organizations, who are subject to focused In-Competition and Out-of-Competition Testing as part of that International Federation’s or National Anti-Doping Organization’s test distribution plan and therefore are required to provide whereabouts information as provided in Article 5.6 of the World Anti-Doping Code and the International Standard for Testing and Investigations;

“Registrar” means the Sports Registrar appointed under section 45 of the Sports Act; No. 25 of 2013.

“sample” means any biological material collected for the purposes of doping control;

“sports organisation” means a body registered in Kenya for purposes of promoting sports ;

“tampering” means altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring;

“target testing” means selection of specific athletes for testing based on criteria set forth in the International Standard for Testing and Investigations;

“testing” means the parts of the doping control process involving test distribution planning, sample collection, sample handling, and sample transport to the laboratory;

“Therapeutic Use Exemption” means an exemption to use a prohibited substance or prohibited method and which is obtained in a manner as described in Appendix 1 and Article 44 of the World Anti-Doping Code;

“trafficking” means selling, giving, transporting, sending, delivering or distributing or possessing for any such purpose a prohibited substance or prohibited method by an athlete, athlete support person or any other person subject to the jurisdiction of the Agency to any third party;

Provided that it shall not include the actions of bona fide medical personnel involving a prohibited substance used for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving prohibited substances which are not prohibited in out-of-competition testing unless the circumstances as a whole demonstrate such prohibited substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance;

“Tribunal” means the Sports Tribunal established under section 55 of the Sports Act;

No. 25 of 2013.

“United Nations Educational Scientific and Cultural Organization Convention Against Doping in Sport” means the International Convention against Doping in Sport adopted by the 33rd session of the United Nations Educational Scientific and Cultural Organization General Conference on 19 October 2005, including any and all amendments adopted by the States Parties to the Convention and the Conference of Parties to the International Convention against Doping in Sport;

“use” means the utilization, application, ingestion, injection or consumption by any means of any prohibited substance or prohibited method; and

“World Anti-Doping Agency” means a sports body set up for the purposes of coordinating anti-doping activities worldwide.

3) This Act applies to-

(a) the Agency;

(b) the following persons’ whether or not they are minors-

Application of the
Act

- (i) athletes and athlete support personnel who are members or licensees of any national federation or sports organization in Kenya;
- (ii) athletes and athlete support personnel who participate in such capacity in events, competitions and other activities organized or recognized by any national federation or sports organization; and
- (iii) other persons present in Kenya over whom the Convention, Code, International Standards or the Anti-doping Rules give the Agency jurisdiction;
- (c) manufacturers, importers, stockists, distributors and sellers of products containing prohibited substances or methods; and
- (d) national federations, national sports organizations, sports organizations, fitness centres and gyms.

4. The purpose of this Act is to give effect to the World Anti-doping Code and the United Nations Educational Scientific and Cultural Organization Convention Against Doping in Sport in order to— Purpose of the Act.

- (a) protect the fundamental right of athletes to participate in sports activities that are free from doping; and
- (b) put in place coordinated and effective mechanisms to detect, deter and prevent the use of prohibited substances or prohibited methods in competitive and recreational sport with the aim of ensuring fairness and equity in sporting activities and promoting the health of athletes globally.

PART II—ESTABLISHMENT OF THE ANTI-DOPING AGENCY

5. (1) There is established a body to be known as the Anti-doping Agency of Kenya. Establishment of the Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal which shall be capable, in its corporate name, of—

- (a) suing and being sued;

- (b) owning, taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;
- (c) receiving and borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all such other acts which may lawfully be done or performed by a body corporate.

(3) The Agency shall be the successor in title to the Anti-doping Agency established under the Anti-doping Agency of Kenya Order, 2015, which shall cease to have effect immediately upon the commencement of this Act.

(4) The transitional provisions set out in section 45 shall have effect upon the commencement of this Act.

6. The headquarters of the Agency shall be in Nairobi.

Headquarters of the Agency.

7. (1) The functions of the Agency shall be to —

Functions of the Agency.

- (a) promote participation in sport, free from doping in order to protect the health and well-being of competitors and the rights of all persons who take part in sport;
- (b) create awareness in order to discourage the practice of doping in sport among the public and the sporting community in particular;
- (c) develop a national strategy to address doping in sport in collaboration with the Ministry;
- (d) implement the World Anti-Doping Code and associated International Standards;
- (e) use World Anti-Doping Agency accredited laboratories for analysis of samples and other required specimen;
- (f) implement anti-doping activities in the country including the testing of collected samples in all sports, sport federations and sport organisations;
- (g) undertake, co-ordinate or arrange for research to be undertaken in the field of performance-enhancing substances and methods and doping practices in sport;

- (h) promote and implement the application of various guidelines and international standards in matters related to anti-doping;
- (i) oversee the processes of the Committee;
- (j) carry out investigations in matters of doping in sports;
- (k) provide information to athletes, athlete support personnel and on the procedures for, and developments concerning the collection and testing of samples in accordance with the Code and any standards developed by the World Anti-doping Agency;
- (l) implement the Prohibited List as published by the World Anti-doping Agency from time to time;
- (m) select sportspersons who are to be requested to provide samples for testing when necessary;
- (n) collect samples from sportspersons in accordance with approved guidelines and international standards, and secure the safe transit of samples to laboratories accredited by the World Anti-doping Agency, for testing;
- (o) summon, investigate and call for any document, evidence or person that may be required for the enforcement of the Act;
- (p) co-operate with state agencies, non-governmental organisations and other persons within Kenya and internationally to achieve the Agency's mandate;
- (q) take steps aimed at ensuring that the Government and the National Olympic Committee complies with international agreements and other arrangements to which Kenya is a party concerning the use of drugs and doping in sport;
- (r) maintain data of all prohibited substances in accordance with the directions of the World Anti-doping Agency;
- (s) maintain the Whereabouts Register and a Registered Testing Pool in the Anti-doping Administration and Management System in accordance with the Code;

- (t) prosecute anti-doping offences before the Tribunal or the courts; and
 - (u) carry out any other function conferred by or under this Act and any other relevant treaty.
- (2) In the performance of its functions, the Agency shall—
- (a) address the needs of minors;
 - (b) take into account the needs of persons with disabilities or other persons with special needs; and
 - (c) ensure that the rights of everyone involved in the doping control procedures are respected.

8. The Agency shall have all the powers necessary for the proper performance of its functions under this Act. Powers of the Agency.

9. Pursuant to the World Anti-doping Code and the United Nations Educational Scientific and Cultural Organization Convention Against Doping in Sport, the Agency and the Committee shall— Independence of Agency and Therapeutic Use Exemption Committee.

- (a) not require the consent of any person or authority to commence any investigations or impose any administrative sanctions; and
- (b) not be under the direction or control of any person or authority in the exercise of their powers under this Act or any other written law.

10. (1) There shall be a Board of the Agency which shall consist of— Board of the Agency.

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or a representative;
- (c) the Principal Secretary for matters relating to sports or a representative;
- (d) the Chief Executive Officer; and
- (e) not more than five other persons appointed by virtue of their knowledge and experience in sports, appointed by the Cabinet Secretary.

(2) A person shall be qualified to be appointed as a member of the Board if such person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in matters relating to anti-doping, sports or administration; and
- (c) satisfies the requirements of Chapter 6 of the Constitution.

(3) The Cabinet Secretary shall, in appointing members of the Board, ensure the representation of women, youth and persons with disabilities.

(4) The appointment of members under subsection (1) (a) and (e) shall be by name and by notice in the Kenya Gazette.

(5) A person shall not be appointed as a member of the Board if that person—

- (a) is a member of or an official in a national sports federation;
- (b) is employed by or is associated with any person who supplies goods or services to the Agency or whose spouse or family member is so employed or associated;
- (c) holds office in a political party;
- (d) is an athlete, athlete support personnel or an official of a sports organization, sports club or sports federation;
- (e) has been convicted whether in Kenya or elsewhere of an offence involving dishonesty or any other criminal offence for which such a person has been sentenced to imprisonment without the option of a fine; or
- (f) is an undischarged bankrupt.

11. (1) The Chairperson and members appointed under section 10 shall hold office for a term of three years and shall be eligible for reappointment for one further term. Tenure.

(2) The Chairperson and members of the Board shall serve on part time basis.

12. (1) A person may be removed as a member of the Board if that person— Removal of Board Member.

- (a) violates the provisions of Chapter 6 of the Constitution;
- (b) is incapacitated by prolonged physical or mental illness and is unable to discharge the duties of his office;
- (c) is absent without the permission of the Chairperson or the Cabinet Secretary in the case of the Chairperson, from three consecutive meetings of the Board;
- (d) is convicted of an offence and imprisoned for a term of more than six months;
- (e) fails to comply with the provisions of the Act relating to disclosure; or
- (f) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors.

(2) A member of the Board shall be given an opportunity to be heard before he or she is removed under this section.

13. (1) A vacancy may arise in the Board where a member— Vacancy in the Board.

- (a) resigns in writing to the President or the Cabinet secretary as the case may be;
- (b) dies, or
- (c) is removed under section 12.

(2) The appointing authority shall fill a vacancy in the Board—

- (a) as soon as is practicable; and
- (b) with a person with similar qualifications as the one who resigned, died or was otherwise removed from the Board.

14. (1) The Board shall have the powers necessary for the proper performance of the functions of the Agency under this Act. Powers of the Board.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Agency in such manner as best promotes the purpose for which the Agency is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Agency;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for the funds of the Agency as may be necessary;
- (e) invest any of the funds of the Agency not immediately required for its purposes;
- (f) lay down policy guidelines for operations and management of all funds collected by the Agency; and
- (g) enter into associations with other bodies or organizations within and outside Kenya as the Agency may consider desirable or appropriate in furtherance of the purpose for which the Agency is established; and
- (h) perform all such other acts or undertake any activity as may be incidental or conducive to the attainment or fulfillment of any of the functions of the Agency under this Act.

15. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.

Conduct and Business affairs of the Board.

(2) Subject to the provisions of the Schedule, the Board may determine its own procedure and the procedure for any committee of the Board.

16. (1) The common seal of the Agency shall be kept in the custody of the Agency and shall not be affixed to any instrument or document except as may be generally or specifically authorised by the Board.

Seal and execution of documents.

(2) The common seal of the Agency shall be authenticated by the signature of the Chief Executive

Officer and the Chairperson or one other member of the Board authorized by the Board.

(3) All documents, other than those required by law to be under seal and all decisions of the Board, may be authenticated by the signature of the Chairperson or, in the case of a decision taken at a meeting at which the Chairperson was not present, by the signature of the person presiding at such meeting.

(4) No decision of any committee of the Board shall be effective unless it has been confirmed by the Board.

17. (1) There shall be an officer of the Agency, to be known as the Chief Executive Officer, who shall be competitively recruited and appointed by the Board.

Chief Executive Officer.

(2) No person shall be appointed as Chief Executive Officer unless the person—

- (a) possesses a postgraduate degree from a recognized institution and has a least ten years working experience in sports or administration;
- (b) has knowledge and experience in matters of Anti-doping; and
- (c) satisfies the requirements of Chapter 6 of the Constitution.

(3) The Chief Executive Officer shall be the Secretary to the Board.

(4) The Chief Executive Officer shall be responsible for the—

- (a) implementation of the decisions of the Board;
- (b) day to day management of the affairs of the Agency and in particular for the implementation of the policies and programmes in relation to anti-doping activities including but not limited to—
 - (i) education and awareness;
 - (ii) research;
 - (iii) testing;
 - (iv) investigations;
 - (v) results management;

- (vi) Therapeutic Use Exemption applications; and
- (vii) the formulation, development and implementation of the agency's strategic plan and any other plans in order to carry out the mandate of the Agency;

(c) organization and management of the staff; and

(d) any other function as may be directed by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and is eligible for re-appointment for one further term.

18. (1) The Chief Executive Officer may be removed from office by the Board for— Removal of Chief Executive Officer.

- (a) inability to perform the functions of his office arising out of physical or mental incapacity;
- (b) misbehaviour or misconduct;
- (c) incompetence; or
- (d) violation of chapter six of the Constitution.

(2) The Chief Executive Officer shall be given an opportunity to be heard before he or she is removed under this section.

19. (1) The Agency may appoint such officers and members of staff upon such terms and conditions of service as it may consider necessary for the proper performance of its functions. Staff of the Agency.

(2) A person shall be qualified to be employed by the Agency if such a person was not a member or official of a national sports body for the two years immediately preceding the appointment.

20. The members of the Board and members of staff shall be paid such remuneration as the Cabinet Secretary upon the advice of the Salaries and Remunerations Commission may determine. Remuneration.

21. (1) The staff of the Agency shall not be personally liable for any act which is done in good faith in the performance of any duty or in the exercise of any power under this Act. Protection from Personal Liability.

(2) The provisions of this section shall not relieve a member or member of staff of the Agency from criminal liability or the Agency from liability in tort or contract, to pay compensation or damages to any person for any injury caused to such person, his property or any of his or her interests.

22. (1) The Board may, in writing, delegate the exercise of any of the powers or the performance of any of the functions to the Chairperson, member of the Board or a committee of the Board. Delegation by the Board.

(2) A person or a committee of the Board delegated with a function or power shall observe and have regard to all conditions imposed by the Board in respect of such delegation of function or power.

(3) Any function or power delegated under this section shall be performed and exercised in the name and on behalf of the Authority.

23. (1) There is established the Therapeutic Use Exemption Committee. Therapeutic use Committee.

(2) The Committee shall comprise of the following—

- (a) a chairperson who is a medical doctor with over seven years' experience in matters related to sport;
- (b) two medical doctors of not less than five years' experience in matters related to sport;
- (c) an international level athlete who has since retired; and
- (d) a sports administrator who has since retired.

(3) The Chairperson and members appointed under this section shall hold office for a term of five years and shall be eligible for reappointment for one further term.

(4) The quorum for the conduct of the business of the Committee shall be three members of whom at least two, shall be doctors.

(5) The Committee shall be guided by the following in the performance of their work—

- (a) the Code;
- (b) International Guidelines on Therapeutic Use Exemption;

- (c) the Prohibited List; and
- (d) the provisions of this Act.
- (6) The functions of the Committee shall be to—
 - (a) receive, review and approve applications for the grant of therapeutic use exemption by athletes who compete at the national level;
 - (b) receive, review and approve applications for the grant of therapeutic use exemption by athletes who compete at the international level, if requested to do so by an international federation;
 - (c) review therapeutic use exemptions issued by an international federation for compliance with the International Standard for Therapeutic Use Exemptions; and
 - (d) refer to the World Anti-Doping Agency any therapeutic use exemption issued by an international federation which in its view does not meet the requirements of the International Standard for Therapeutic Use Exemption.

24. (1) An athlete, other than an international-level athlete, with a medical condition requiring the use of a prohibited substance or prohibited method, may, in accordance with the provisions of this Act and the Anti-Doping Rules, apply to the Committee for a therapeutic use exemption.

Application for
Therapeutic use
exemption.

(2) An international-level athlete, or an athlete who participates in an international event, with a medical condition requiring the use of a prohibited substance or prohibited method, may, in accordance with the International Standard for Therapeutic Use Exemptions, apply no later, except in emergency situations, than—

- (a) thirty days before his participation in an international event; or
- (b) such other period as may be provided for in the Anti-doping Rules of the relevant International Federation, to the relevant International Federation for an exemption and provide the Committee with a copy of the application prior to the international event.

(3) An application under subsections (1) or (2) shall be made—

- (a) immediately after the athlete becomes aware that the use of a prohibited substance or prohibited method is required; and
- (b) subject to any circumstance of emergency, no later than thirty days prior to the participation of the athlete in any competition or event.

25. (1) The Agency shall establish a Registered Testing Pool. Registered testing Pool.

(2) The Agency, shall in accordance with the Anti-doping Rules, publish criteria for the inclusion of the name of an athlete in its Registered Testing Pool.

(3) The Agency shall notify an athlete, in writing, of the inclusion of his or her name in its Registered Testing Pool.

PART III—ADMINISTRATION AND ENFORCEMENT

26. The following are prohibited activities under this Act— Prohibited activities.

- (a) the presence of a prohibited substance or its metabolites or markers in an athlete's sample;
- (b) the use or attempted use by an athlete of a prohibited substance or a prohibited method;
- (c) the evasion, refusal or failure to submit to the collection of a sample ;
- (d) the violation of Whereabouts failures;
- (e) the tampering or attempted tampering with any part of doping control;
- (f) the unlawful possession of a prohibited substance or prohibited method;
- (g) the trafficking or attempted trafficking in any prohibited substance or prohibited method;
- (h) unlawful administration or unlawful attempted administration to an athlete in-competition of any prohibited substance or prohibited method, or unlawful administration or unlawful attempted

administration to an athlete out-of-competition of any prohibited substance or prohibited method that is prohibited out-of-competition with the intention of doping;

- (i) complicity;
- (j) prohibited association;
- (k) unlawfully stocking, distributing, transporting, selling or in any manner unlawfully dealing in products containing prohibited substances.

27. (1) An athlete or an athlete support personnel who is not a minor shall be required to accept the Code by signing a declaration of the acceptance of the Code and submit the approval to the Agency.

Acceptance of the Code and related obligations.

(2) In the case of a minor, the guardian shall sign such acceptance referred to in subsection (1) and submit the acceptance to the Agency.

(3) In the case of a team related sport, the team shall sign a team declaration which shall bind the team collectively and individually.

(4) It shall be an anti-doping rule violation for an athlete or athlete support personnel to violate any of the provisions of section 26.

(5) An athlete shall—

- (a) be knowledgeable of, and comply with, the Anti-Doping Rules:

Provided that lack of such knowledge shall not be used as a defence in case of infringement of any provision of this Act;

- (b) be responsible for ensuring that no prohibited substance enters his or her body;
- (c) inform medical personnel of his or her obligation not to use prohibited substances and prohibited methods;
- (d) be available for, and submit to, in-competition and out-of-competition testing at any time and place, with or without advance notice; and

- (e) be responsible for any prohibited substance or its metabolites or markers found to be present in his bodily specimen.
- (6) An athlete support personnel shall—
 - (a) co-operate with the Athlete Testing Programme; and
 - (b) use his or her influence to foster anti-doping attitudes among athletes.

28. (1) A sample taken from an athlete shall be analysed at an accredited laboratory to detect prohibited substances and prohibited methods.

Accredited
Laboratories.

(2) A sample shall not be analysed for a purpose other than that referred to under subsection (1) unless—

- (a) the athlete consents in writing; and
 - (b) any means of identification is removed to ensure that the sample cannot be traced back to the athlete.
- (3) The results of all tests shall be submitted to the Agency.

29. (1) The Agency shall for purposes of enforcing this Act appoint such number of anti-doping compliance officers with the relevant training and issue such anti-doping compliance officers with the certificates of authority to act as anti-doping compliance officers.

Appointment of
anti-doping
compliance officers.

(2) A person appointed as an anti-doping compliance officer under subsection (1)—

- (a) shall hold office subject to such terms and conditions as the Board may determine;
- (b) shall have police powers in the exercise of his or her duties under this Act;
- (c) may subject to the direction of the Director Of Public Prosecution summon, examine witnesses under oath or affirmation and conduct prosecutions for any offence committed under this Act; and
- (d) shall be responsible for enforcing the provisions of section 26.

(3) The Agency may amend or withdraw the appointment of anti-doping compliance officers under this Act.

(4) The appointment of anti-doping compliance officers under this section shall be by notice in the Gazette for a period of three years.

30. (1) An anti-doping compliance officer may at any reasonable time, with or without a search warrant—

Power of Entry and Interrogation.

(a) enter upon any premises, vessel or vehicle in which prohibited substances are reasonably suspected of being stored and make a record in the prescribed form; or

(b) seize, detain, and where applicable remove for detention the prohibited substances found in such premises, vessel or vehicle.

(2) If the anti-doping compliance officer suspects that any person found at the premises, vessel or vehicle may provide any useful information, he or she may—

(a) interrogate that person and record a statement from that person; or

(b) demand from that person any book, document, article, object or substance which may assist in identifying any prohibited substance or person dealing in prohibited substances.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information which may incriminate him or her.

(4) An anti-doping compliance officer may with or without warrant, arrest any person whom the anti-doping compliance officer suspects on reasonable grounds of having committed an offence under this Act and may search the person and detain the person for a maximum of twenty four hours at the nearest police station.

(5) Before acting under this section, an anti-doping compliance officer shall, if required to do so, produce documents of his or her appointment.

PART IV—DISPUTE RESOLUTIONS

31. (1) The Tribunal shall have jurisdiction to hear—

Jurisdiction of the Sports Tribunal.

(a) any appeal from a decision by the Agency; the

Sports Registrar or the Sports Fund;

(b) any disputes involving the following—

- (i) national-level athletes or athletes who compete at the county level;
- (ii) athlete support personnel,
- (iii) sports federations or sports organisations; or
- (iv) professional athletes and professional sports persons.

(3) The Cabinet Secretary may prescribe Rules to effect this section.

32. (1) The Agency may lodge an appeal against a decision of the World Anti-doping Agency or an International Federation to the Court of Arbitration for Sport in accordance with Article 4.4 of the Code.

Appeal to the Court of Arbitration for Sport.

(2) An international level athlete, an athlete support personnel, the Agency, an international federation or the World Anti-doping Agency may appeal against a decision of the Tribunal to the Court of Arbitration for Sport in accordance with article 13 of the Code.

PART V—FINANCIAL PROVISIONS

33. (1) The funds of the Agency shall consist of—

Funds of the Agency.

- (a) such monies as may be appropriated by Parliament for the purposes of the Agency;
- (b) such monies or assets as may accrue or vest in the Agency in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) any grants, gifts, donations or other endowments as may be given to the Agency; and
- (d) monies lent to or donated to the Agency.

(2) Any funds donated or lent to, or gift made to the Agency shall be disclosed to the National Assembly and made public before use.

34. The financial year of the Agency shall be the period of twelve months ending on the thirtieth of June in each year.

Financial Year.

35. (1) Three months before the commencement of each financial year, the Agency shall cause to be prepared estimates of the revenue and expenditure of the Agency for that year. Annual Estimates.

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

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Agency;
- (b) the payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Agency;
- (c) the maintenance of the buildings and grounds of the Agency; and
- (d) the creation of such funds to meet future or contingent liabilities in respect of, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Agency may consider necessary.
- (e) all expenses related to the working and management of the Agency and its projects and other properties including proper provision for depreciation, wear and tear or renewal of assets, insurance and other matters as the board may consider necessary;
- (f) such sums including compensation as may be payable by the Agency;
- (g) taxes, rates and levies payable by the Agency under any law; and
- (h) the funding of the activities of the Agency in respect of any financial year.

36. The Agency shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities. Accounts and Audit.

(2) Within a period of three months after the end of each financial year, the Agency shall submit to the Auditor-General the accounts of the body corporate in respect of that year together with a—

(a) statement of the income and expenditure of the Agency during that year; and

(b) statement of the assets and liabilities of the Agency on the last day of that financial year.

(3) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act, 2015. Act No. 34 of 2015.

37. (1) The Agency shall furnish to the Cabinet Secretary, such returns, reports, accounts and information with respect to its property and activities as the Cabinet Secretary may, from time to time, require or direct. Returns and Reports.

(2) Without prejudice to the generality of subsection (1), the Agency shall, within three months after the end of each financial year, cause to be made and submitted to the Cabinet Secretary a report dealing with the activities of the Agency in accordance with Article 14.4 of the Code during the preceding financial year.

38. The Agency with the approval of the National Treasury shall open and maintain bank accounts in such banks in Kenya as the Agency may consider necessary. Bank Accounts.

39. The Agency may invest any of its funds in securities in it may by law invest trust funds, or in any other securities which the Cabinet Secretary for the time being responsible for finance may, from time to time, approve. Investment of Funds.

40. No expenditure shall be incurred by the agency except in accordance with the annual estimated estimates approved under section 35 or as approved by the Board. Expenditure.

PART VI—GENERAL PROVISIONS

41. A member of the Board or member of staff of the Agency shall not disclose any information obtained in the course of undertaking any function under this Act unless in accordance with the provisions of this Act and the law relating to information. Confidentiality.

42. (1) A person or body who—

(a) disobeys a summons by the Agency; Offences.

- (b) fails to produce any sample, document, papers or any other thing on the order of the Agency;
- (c) refuses to submit a sample or refuses to be examined in furtherance of this Act;
- (d) fails to comply with any lawful order or direction of the Agency;
- (e) presents to the Agency a false document or makes a false statement with the intent to deceive or mislead an investigating officer;
- (f) willfully obstructs or hinders any person acting in the performance of any function or exercise of powers conferred by this Act;
- (g) in any way interferes with the functioning or operations of the Agency; or
- (h) violates the rules relating to confidentiality, public disclosure and privacy of data.

commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

- (2) A person or body who-
 - (a) Unlawfully transports or transfers prohibited substances, within or outside Kenya;
 - (b) Stocks supplies of products containing prohibited substances in an unlawful manner; or
 - (c) Administers applies or generally causes an athlete to use prohibited substances

Commits an offence and shall be liable, on conviction, to a fine of not less than three million shillings or to imprisonment of not less than three years or to both such fine and imprisonment. In case of corporate bodies, in addition to the fine, the trading licence of the respective corporate body shall be withdrawn for a period of not less than one year.

- (3) A person participating in recreational sport in a gym, fitness centre, private club or other similar facility who-

- (a) uses or causes another person to use a prohibited substance or method;
- (b) is found in possession of a prohibited substance;
- (c) administers or attempts to administer a prohibited substance; or
- (d) buys, sells, stocks, transports or in any way deals with a prohibited substance

commits an offence and is be liable, on conviction, to a fine of not less than one hundred thousand shillings or to imprisonment or for a term of not less than one year or to both such fine and imprisonment:

Provided that if such a person is an athlete or athlete support personnel then such a person shall be subjected only to the sanctions specified in subsection (6).

(4) A medical practitioner, pharmacist, veterinary surgeon, dentist, nurse, physiotherapist, traditional herbalist, or any other health related professional who—

- (a) prescribes or dispenses prohibited substances or methods to an athlete with the intent of doping;
- (b) unlawfully administers prohibited substances or methods to an athlete;
- (c) acquires, stocks or is found in unlawful possession of prohibited substances; or
- (d) aids, abets or in any way encourages the unlawful use of prohibited substances in sport

commits an offence and shall be liable upon conviction to a fine of not less than three million shillings or to imprisonment for a term of not less than three years or to both such fine and imprisonment, and shall have his or her professional licence revoked for a period of not less than one year.

(5) A registered sports body that commits any of the prohibited activities set out in section 26, shall be subject to one or a combination of any of the following sanctions—

- (a) a reprimand;
- (b) withdrawal of some or all services that are funded by public resources or benefits currently provided

directly or indirectly by the Agency or the Sports Fund;

- (c) withdrawal of eligibility to receive services that are funded from public resources or benefits from or through the Agency, the Sports Fund or other source and the Agency shall impose conditions before it reinstates such eligibility;
- (d) suspension of its funding from the Sports Fund and other governmental agencies for the period of non-compliance;
- (e) withdrawal or withholding for a stated period, on terms to be determined by the Tribunal of some or all public funding awarded but not yet paid to the Agency;
- (f) withdrawal of eligibility to receive public funding from the Sports Fund or other source in the future, with conditions provided for the reinstatement of such eligibility;
- (g) refund any public and private funds given to it during the period of non-compliance; and
- (h) be deregistered by the Sports Registrar:

Provided that, in addition, any athlete support personnel identified as being responsible for non-compliance with any rule made under this Act shall be subjected to the sanctions under subsection (4).

(6) An athlete or athlete support personnel who commits any of the prohibited activities under section 26, commits an anti-doping rule violation and shall be handled in the manner set out under this Act.

43. A person who contravenes any provision of this Act for which no specific penalty is provided shall be liable to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both such fine and imprisonment.

General Penalty.

44. (1) All property, assets, rights, liabilities, obligations, agreements, conveyances, deeds, leases, licences, permits, exemptions, power of attorney, undertakings, securities and other arrangements existing at the commencement of this Act and vested in, acquired,

Transitional and Savings Provisions.

incurred or entered into by or on behalf of the Anti-doping Agency of Kenya established under the Anti-doping Agency of Kenya Order, 2015 (hereinafter referred to as “the former Agency”), shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Agency to the same extent as they were enforceable by or against “the former Agency” before the commencement of this Act. L. N. 256/2015.

(2) A person who, immediately before the commencement of this Act, was an employee of “the former Agency” shall, on the commencement of this Act, be deemed to be an employee of the Agency.

PART VII—PROVISIONS ON DELEGATED POWERS

45. The Cabinet Secretary may, in consultation with Regulations.
the Agency make regulations—

- (a) generally for the better carrying out of the provisions of this Act; and
- (b) for prescribing anything that may be required to be prescribed under this Act.

(2) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power referred to under this section are those found in—
 - (i) the Statutory Instruments Act, 2013;
 - (ii) the Interpretation and General Provisions Act,

- (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

SCHEDULE (S. 15)

CONDUCT OF AND BUSINESS AFFAIRS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting. Meetings of the Board.

(2) Despite subparagraph (1), the Chairperson may, on his or her own motion, or upon the request in writing by at least three members of the Board, convene a special meeting of the Board at any time.

(3) The quorum for the conduct of the business of the Board shall be two thirds of the total members of the Board.

(4) Unless at least six members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The Chairperson shall preside at every meeting of the Board but the members present shall elect one of their numbers to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted.

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

(7) A written resolution signed by all members of the Board shall constitute a valid resolution of the Agency as if it were duly passed at a validly constituted meeting of the Board.

(8) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) The Board may establish such committees as it may consider necessary to perform such functions and responsibilities as it may determine. Committees.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it considers appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be subject to ratification by the Board.

(5) Each committee shall not have more than five members.

3. (1) A member of the Board who has an interest in any contract, or other matter presented at a meeting of the Board shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter. Disclosure of Interest.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings and removal from the Board by the appointing Agency.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board and the Board committees to be entered in books kept for that purpose. Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to the World Anti-doping Code and the United Nations Educational Scientific and Cultural Organization Convention Against Anti-doping in order to protect the fundamental right of athletes to participate in sport free of prohibited substances and methods. The Bill also seeks to protect the health of athletes and to put in place coordinated and effective mechanisms to detect, deter and prevent the use of prohibited substances or prohibited material in competitive or recreational sport.

PART I—contains preliminary provisions.

PART II of the Bill provides for the establishment of the Anti-doping Agency as a body corporate. It also provides for the functions of the Agency which include the promotion of sports activities which are free from the use of prohibited substances or methods intended to artificially enhance performance, the development of a national strategy to address doping in sport, the promotion and implementation of various guidelines and international standards in matters related to Anti-doping and the investigation and prosecution of Anti-doping offences among others. Further, this Part also contains the powers of the Agency and establishes the Board of the Agency and provides for the procedure of appointment and removal of the members of the Board. This Part also empowers the Board to employ such number of staff as it may consider necessary for the proper performance of its functions.

PART III sets out the administrative provisions of the Bill. This Part sets out the prohibited activities under the Act and requires all athletes to formally accept the provisions of the World Anti-doping Code and submit a formal declaration to this effect to the Agency. This Part further provides for the analysis of samples by laboratories accredited by the World Anti-doping Agency.

PART IV sets out the mechanisms for dispute resolution by outlining the jurisdiction for the Sports Tribunal and providing for appeals from such decisions to the Court of Arbitration for Sport.

PART V sets out the financial provisions for the Agency.

PART VI —contains the general provisions.

PART VII—contains provisions on Delegated Powers

This Bill once enacted shall confer on the Cabinet Secretary power, in consultation with the Agency to make regulations generally for the better carrying out of the provisions of this Act and for prescribing anything that may be required to be prescribed under this Act.

SCHEDULE to the Bill contains provisions on the conduct and business affairs of the Board.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 10th March, 2016.

ADEN DUALE,
Leader of Majority Party.