

THE CONSTITUENCIES DEVELOPMENT FUND

ACT, 2003

**An Act of Parliament to provide for the establishment of the
Constituencies Development Fund and for
connected purposes**

ENACTED by the Parliament of Kenya as follows -

PART I - PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Constituencies Development Fund Act, 2003, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint but not later than thirty days from the date of assent.

Interpretation.

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

“Board” means the Constituencies Development Fund Board established by section 5 ;

“Clerk” means the Clerk of the National Assembly;

“Chairperson” means the Chairperson of the Board appointed under section 5(4);

“Chief Executive Officer” means the Chief Executive Officer of the Board appointed under section 7;

“community” means residents of a particular geographical area or region defined as a constituency, location, or sub location and having common interests;

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“constituency” has the meaning assigned to it in the National Assembly and Presidential Elections Act;

“Constituency Development **Fund** Committee” means the committee established under section 23;

“constituency **fund** account” means the account maintained for every constituency in accordance with section 45;

“Constituencies Fund Committee” means a committee of the National Assembly established in accordance with section 27;

“Districts Projects Committee” means the committee established under section 39;

“Fund” means the Constituencies Development Fund established under section 4;

“Minister” means the Minister for the time being responsible for matters relating to ~~finance~~ **planning**;

“**National Account**” means the **Constituencies Development Fund account maintained under section 46**”;

~~“National Committee” means the Constituencies Development Fund Management Committee established under section 5; and~~

~~“Officer administering the Fund” means an officer appointed by the Minister in writing for that purpose.~~

“**officer of the Board**” means an officer of the **Board appointed under section 44**;

“**project**” means an eligible development project as described in the Act;

“**project committee**” means a committee or board of persons elected or nominated to implement a

project or manage an institution, including a committee existing prior to the establishment of the Fund, and which is assuming the responsibility of implementing a project funded under the Act;

“sub-project” means one of similar activities lumped together into one project for purposes of sections 21 and 22 of the Act;

“youth” means a person who has attained the age of eighteen years and has not attained the age of thirty five years.

Application.

3. The provisions of this Act shall apply, as more specifically provided for in the Act, and shall ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of development and in particular in the fight against poverty at the constituency level.

PART II - ESTABLISHMENT OF THE CONSTITUENCIES DEVELOPMENT FUND

Establishment of the
Constituencies
Development Fund.

4. (1) There is established a Fund to be known as the Constituencies Development Fund (in this Act referred to as the “Fund”) which shall be administered by the ~~Officer administering the Fund under the direction of the National Committee Board.~~

(2) There shall be paid into the Fund -

(a) an amount of money equal to not less than 2.5% (two and a half per centum) of all the Government ordinary revenue collected in every financial year; and,

- (b) any moneys accruing to or received by the ~~National committee~~ **Board** from any other source.

(3) The expenditure from the Fund shall be on the basis and limited to the annual budget which shall be submitted to the Minister ~~for approval in accordance with this Act before the beginning of the financial year to which the budget relates~~ **by various constituencies in accordance with the Act.**

(4). There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the provisions of this Act.

(5) If the Act comes into operation mid-way in a financial year then the Minister shall within one month of the assent, table in the House the amount proposed to be put into the Fund and the allocation to each Constituency, and the amounts so proposed shall be allowed for through supplementary estimates.

~~Establishment of
the National
Management
committee.~~

~~5.(1) There is established a committee to be known as the National Constituencies Development Fund Management Committee (in this Act referred to as the “National Committee”).~~

~~(2) The National Committee shall comprise—~~

~~(a) the Permanent Secretary of the Ministry for the time being responsible for matters relating to finance or his designated alternate, not being below the level of a Deputy Secretary who shall be the Chairman of the Committee;~~

~~(b) the Permanent Secretary of the Ministry for the time being responsible for matters~~

~~relating to economic planning or his designated alternate, not being below the level of an Under Secretary;~~

~~— (c) the Permanent Secretary of the Ministry for the time being responsible for matters relating to regional development or his designated alternate, not being below the level of an Under Secretary;~~

~~— (d) the Permanent Secretary of the Ministry for the time being responsible for matters relating to agriculture or his designated alternate, not being below the level of an Under Secretary;~~

~~(e) the Clerk of the National Assembly or his designated alternate not being below the level of a Deputy Clerk;~~

~~(f) eight persons appointed by the Minister from a list submitted in accordance with subsection (3), and qualified in matters relating to finance, accounting, engineering, economics, rural development, or law; and~~

~~(g) the Officer administering the Fund who shall be an ex-officio member and secretary to the committee.~~

~~— (3) The organizations listed in the First Schedule shall each submit names of two nominees, one of whom shall be a man and the other a woman and out of the sixteen names submitted, the Minister shall appoint eight persons one from each of the eight organizations and at least a third of the eight appointees shall be from either gender, to be members of the Committee.~~

~~(4) The names and curriculum vitae of persons nominated or appointed as members of the National Committee, pursuant to sub-section (3), and the name of the person proposed to be appointed as the officer administering the Fund, including names of persons to be designated as alternates, shall be submitted to Parliament for approval before the appointments are made.~~

Establishment of the Board

5. (1) There is established a Board to be known as the Constituencies Development Fund Board.

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

- (a) suing and being sued;**
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;**
- (c) borrowing money or making investments; and**
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.**

(3) The Board shall be administered by a Board of Management which shall consist of –

- (a) the Permanent Secretary of the Ministry for the time being responsible for matters**

relating to economic planning or his designated alternate, not being below the level of Director of Planning;

- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to finance or his designated alternate, not being below the level of Director of Budget;**
- (c) the Clerk of the National Assembly or his designated alternate not being below the level of Deputy Clerk;**
- (d) the Attorney-General or his designated alternate not being below the level of Senior State Counsel;**
- (e) eight persons, qualified in matters relating to finance, accounting, engineering, economics, community development, or law, appointed by the Minister in accordance with subsection (5);**
- (f) four persons, qualified in accordance with paragraph (e), appointed by the Minister to achieve any regional imbalance that may not be achieved pursuant to the process under subsection (5);**
- (g) the Chief Executive Officer who shall be an ex-officio member and secretary to the Board.**

(4) The Minister shall appoint the Chairperson of the Board from amongst the eight persons appointed in accordance with paragraph (e) of

subsection (3).

(5) The organizations listed in the First Schedule shall each submit names and curriculum vitae of four nominees, two of whom shall be men and two women, and out of the thirty two names submitted, the Minister shall, taking into account regional balance of the people of Kenya, appoint nine persons, at least one from each of the eight organizations and at least a third of the appointees to be from either gender, to be members of the Board.

(6) The names and curriculum vitae of persons nominated to be appointed as members of the Board, pursuant to sub-section (5) and the name of the person proposed to be appointed as the Chief Executive Officer shall be submitted to Parliament for approval before the appointments are made.

Functions of the
National Committee.

6. (1) The functions of the ~~National committee~~
Board shall be -

- (a) to ensure ~~allocation and~~ **timely and efficient** disbursement of funds to every constituency;
- (b) to ensure ~~prudent~~ **efficient** management of the Fund;
- (c) to receive and discuss annual reports and returns from the constituencies;
- (d) to ensure the compilation of proper records, returns and reports from the constituencies;
- (e) ~~to ensure timely submission to Parliament of various returns, reports and information as required under the Act; and~~

(e) receive and address complaints and disputes and take any appropriate action;

~~(f) to perform such other duties as the National Committee, in consultation with the Minister, may deem necessary from time to time for the proper management of the Fund.~~

(f) to consider project proposals submitted from various constituencies in accordance with the Act, approve for funding those projects proposals that are consistent with this Act and send funds to the respective constituency fund account of the approved projects;

(g) to perform such other duties as the Minister, with the concurrence of the Constituencies Fund Committee, may deem necessary from time to time for the proper management of the Fund.

~~(2) The quorum necessary for the transaction of the business of the National Committee shall be one half of all the members.~~

(2) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the same to the Constituencies Fund Committee for directions in accordance with section 27(4) (e).

Conduct of business and affairs of the Board.

6A. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Sixth Schedule.

(2) Except as provided in the Sixth Schedule, the Board may regulate its own procedure.

Officer administering
the Fund.

- ~~7.(1) The Officer administering the Fund shall—~~
- ~~(a) be the chief executive of the Fund and secretary to the National Committee.~~
 - ~~(b) supervise and control the day to day administration of the Fund;~~
 - ~~(c) prepare monthly returns on the movement of funds as appropriate for submission to Parliament;~~
 - ~~(d) keep or cause to be kept proper books of accounts and other books and records related to the Fund;~~
 - ~~(e) prepare, sign and transmit to the Controller and Auditor General accounts~~
- ~~— of the Fund in accordance with section~~
- ~~Cap 412. 18(2) of the Exchequer and Audit Act; and~~
- ~~(f) perform any other duties that may be reasonably assigned to him by the National Committee from time to time;~~

~~(2) The Officer administering the Fund shall be appointed by the Minister from among Government public servants who have relevant training and at least five years experience in public finance.~~

Chief Executive
Officer of the Board.

7 (1) There shall be a Chief Executive Officer of the Board who shall be appointed by the Board on a competitive basis and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person-

(a) has a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;

(b) has at least ten years' working experience in the relevant field.

(3) The Chief Executive Officer shall-

(a) be the secretary to the Board; and

(b) subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

Disbursement from
the Fund.

8. (1) Each and every disbursement from the Fund shall be approved by the National Committee ~~minuted by the Board.~~

(2) All disbursements from the Fund shall be for specific projects as ~~provided for in the printed estimates~~

~~prepared for projects under~~ **submitted by the constituencies in accordance with the procedures outlined in this Act.**

(3) All disbursements shall be made through the constituency bank accounts maintained for every constituency in accordance with section 45 of the Act.

(3A) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in section 22 (4) or joint procurement, may be made directly to a supplier or to an account established for the purpose with due concurrence of the Constituencies Fund Committee;

(4) The record of the amounts received by each constituency and the record of expenditure of amounts so received shall be submitted to the ~~National Committee~~ **Board** within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(5) The ~~National Committee~~ **Board** may set out general conditions and requirements for release of funds, provided that such conditions shall be submitted to Parliament for approval before implementation.

~~— (6) The National Committee may impose reasonable requirements including restrictions, on a particular constituency due to previous misuse of funds and such restrictions or requirements shall be reported together with monthly returns to be submitted to Parliament in accordance with this Act.~~

Funds to be
set aside

~~9. (1) The National Committee shall, for each financial year, allocate funds to each constituency and the funds shall be reflected in the printed estimates of that~~

~~particular financial year.~~

(1) The Minister, with the concurrence of the Constituencies Fund Committee, shall for each financial year allocate funds to each constituency in accordance with section 19.

(2) Once funds are allocated for a particular project they shall remain allocated for that project and shall not be re-allocated during the financial year for any other purpose whether in that constituency or anywhere else **without the approval of the Board.**

~~(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the constituency from which the funds were withdrawn.~~

(3) At the end of each financial year, every constituency shall submit a return in the form set out in the Fourth Schedule showing for each project, the amount allocated, the amount disbursed and any unspent funds no longer needed for that project and intended to be re-allocated.

(4) Every constituency which has unspent funds at the end of the financial year shall, in the form set out in the Fifth Schedule, submit a request to the Board detailing how they intend to re-allocate the unspent funds.

(5) Unspent funds for re-allocation in accordance with subsections (3) and (4) may be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(6) For the avoidance of doubt, a return shall be made for the current financial year and every previous financial year on which some funds remain unspent.

Funds to be retained in the Fund.

10. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained ~~for the purposes for which the Fund is established~~ **in the constituency fund account**

(2) All funds allocated to a constituency shall be cumulative and shall be carried forward from one financial year to the next, including funds ~~returned into the accounts in accordance with section 9(3)~~ **retained in the account** or funds which are not utilized for whatever reasons.

Emergency Reserve.

11. (1) A portion of the Fund, equivalent to 5% (five percentum hereinafter referred to as the “Emergency Reserve”) shall remain unallocated and shall be available for emergencies that may occur within the Constituency.

(2) The Constituency Development Fund Committee shall determine the allocation of the emergency reserve and may re-allocate such reserve to other projects at the end of the financial year, in accordance with the Act.

PART III - SUBMISSION OF CONSTITUENCY PROJECT PROPOSALS

Member of Parliament to submit proposals.

12. (1) The list of proposed constituency based projects to be covered under this Act shall be submitted by the member of Parliament for that constituency.

(2) The ~~Clerk~~ **Board** may designate a particular officer to receive and compile the list of proposed constituency projects submitted to ~~him~~ **it** under this Act.

Submission
deadline.

13. The list of the proposed constituency projects shall be submitted to the ~~Clerk~~ **Board** before the end of the month of February in each year or such other month as may be determined by the Minister in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

Submission Form.

14(1). The list of projects shall be submitted on a Standard Constituency Projects Submission Form set out in the Second Schedule to this Act.

(2) All projects proposed for every constituency shall be listed in the Form together with the ~~cost estimates of~~ **amounts allocated to** such projects.

Projects description
Form.

15(1) For every project listed in the Form there shall be attached a Standard Projects Description Form set out in the Third Schedule.

~~(2) The National Committee may, by notice published in the Gazette, amend any of the Schedules to this Act provided that the amendments shall first be referred to Parliament for approval.~~

(2) The Minister may, with the concurrence of the Constituencies Fund Committee, amend any of the Schedules to this Act.

Constituencies Fund
Committee to
recommend.

~~16 (1). The list of projects received by the Clerk pursuant to section 12(3) shall be tabled by the Clerk for review at a meeting of the Constituencies Fund Committee convened for that purpose.~~

~~—— (2). The Constituencies Fund Committee shall scrutinize and recommend the proposals to be forwarded to the Minister for eventual inclusion in the printed estimates of the following financial year.~~

Approval of projects.

16 (1) The list of projects received by the Board pursuant to section 12 shall be tabled for review at a meeting of the Board.

(2) The Board shall scrutinize and approve for funding those projects proposals that are consistent with the Act.

(3) Where the Board does not approve a proposal submitted to it under this section, it shall refer the matter to the Constituencies Fund Committee giving reasons as to why it has declined the proposal.

(4) The Constituencies Fund Committee shall within fourteen days of receipt of the reference under subsection (3), make a decision on whether the proposal should be recommended for funding or not and the decision of the Constituencies Fund Committee shall be final.

Clerk to forward to Minister.

~~—— 17. The Clerk shall, after scrutiny of the list of projects by the Constituencies Fund Committee, submit to the Minister the list of all the projects received for all the constituencies together with a summary showing the total number of projects and the total cost of projects for all the constituencies~~

Discretion .of
Constituency
Development Fund.

17. The allocation of funds to various projects in each constituency is the responsibility of the Constituency Development Fund Committee to be exercised at its own discretion within the provisions of this Act.

List to be serialized.

18. The projects listed for each constituency ~~in accordance with section 17 shall be numbered by the Officer administering the Fund~~ **shall be numbered by the Board and the serial numbers of all projects in a constituency shall bear the number of the constituency as delineated by the Electoral Commission of Kenya** in order to ensure that a project retains the same serial number every year until its completion.

Basis for budget
ceiling.

19. (1) The budget ceiling for each constituency shall be –

- (a) three quarters of the amount specified in section 4(2)(a) divided equally among all constituencies; and
- (b) an amount equal to quarter the amount specified in section 4(2)(a) divided by the national poverty index multiplied by the constituency poverty index.

(2) The Minister shall table in Parliament a schedule showing the ceiling for each constituency, which shall be determined in accordance with sub section (1).

Criteria for Projects.

20.(1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

(2) If some of the projects on the list of a

particular constituency do not comply with the provisions of this Act, then such projects shall be deleted from the list and the list shall be forwarded to the Minister less the unacceptable projects.

(3) If the total cost of the projects so submitted exceeds the allowable ceiling for a constituency, then the order in which the projects are listed shall be taken as the order of priority and the projects shall be struck off from the bottom of the list so that the total amount of the projects is within the allowable ceiling

(4) Whenever the amount for projects in a constituency is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular constituency on the list to be forwarded to the Minister.

PART IV - TYPES OF PROJECTS

Projects to be
community based.

21. (1) Projects under this Act shall be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) Any funding under this Act shall be for a complete project or a defined phase, unit or element of a project **and may include the acquisition of land and buildings.**

(3) All projects shall be development projects and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility **other than as provided for in subsections (9),(10) and (11).**

(4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(5) Notwithstanding the provisions of subsection (4), the **National Committee Constituency Development Fund Committee** may identify a religious body or organization as an appropriate specialized agency for purposes of section 11 with regard to emergency support.

(6) A constituency office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

~~(7) Notwithstanding the provisions of sub-section (3), a constituency office project may include running expenses of the constituency office of up to a maximum of 3% (three per centum) of the total annual allocation for the constituency~~

(7) Notwithstanding the provisions of subsection (3), up to a maximum of three per centum of the total annual allocation for the constituency may be used for administration and such use shall be listed in the Second Schedule as a project.

(8) Development projects may include the acquisition of vehicles, machinery and other equipment.

(9) An appropriate amount not more than three per centum of a constituency's annual allocation may be allocated to recurrent expenses of vehicles, equipment and machinery and be listed as a project provided that such items do not belong to a separate entity.

(10) Sports activities may be considered as development projects for purposes of this Act but shall exclude cash awards provided that the allocation to such activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(11) Monitoring and evaluation of ongoing projects and capacity building of various operatives may be considered as a development project provided that not more than two per centum shall be allocated for this purpose.

(12) Environmental activities may be considered as development projects for purposes of this Act provided that the allocation to such activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(13) Each of the projects shall be listed on the Second Schedule including the emergency item under section 11 and, where applicable, the activities under subsections (6), (7), (8), (9), (10), (11) and (12) of this section.

Number of projects.

22. (1) The number of projects to be included in the Standard Constituency Projects Submission Form specified in the Second Schedule shall be a minimum of five and a maximum of ~~twenty~~ **twenty five** for every constituency in each financial year.

~~(2) Uncompleted projects from a previous financial year shall remain on the project list, so as to ensure that the total number of projects remain the maximum number specified in subsection (1) at any one~~

time.

(2) Any projects to be funded under unspent funds at the end of the financial year may be lumped together as one project with sub projects, where applicable, for the purpose of subsection (1);

~~(3) Project activities of a similar nature in a particular constituency may be considered as one project for purposes of subsection (1), provided that the total cost of such projects shall not exceed 50% (fifty per centum) of the total annual allocation for a particular constituency.~~

(3) Project activities of a similar nature in a particular constituency may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Third Schedule.

~~(2)~~ **(4)** Constituencies may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Constituency Development Committee of each of the participating constituencies and shall be reflected on the projects listed for each of the participating constituencies.

~~(3)~~ **(5)** Where constituencies have joint projects, the District Projects Committee shall co-ordinate such projects.

Composition of the
Constituency
Development
Committee.

23.(1) There shall be a Constituency Development Committee for every constituency, which shall be constituted and convened by the elected Member of Parliament within the first ~~thirty days of a new Parliament~~ **sixty days of a new Parliament or a by election** and shall have a maximum of fifteen members, comprising of

—

- (a) the elected member of Parliament ;
- (b) two councillors in the constituency;
- (c) one district officer in the constituency;
- (d) two persons representing religious organizations in the constituency;
- (e) two men representatives from the constituency;
- (f) two women representatives from the constituency;
- (g) one person representing the youth from the constituency;
- (h) one person nominated from among the active NGOs in the area if any;
- (i) a maximum of three other persons from the constituency such that the total number does not exceed fifteen;**
- (j) an officer of the Board seconded to the Constituency Development Fund Committee by the Board, who shall be ex-officio.**

(2) The elected member of Parliament for every constituency shall, within the first year of a new parliament and at least once every two years thereafter, convene locational meetings in the constituency to deliberate on development matters in the location, the constituency and the district.

(3) Each location shall come up with a list of priority projects to be submitted to the Constituency

Development Committee.

(4) The Constituency Development Committee shall deliberate on project proposals from all the locations in the constituency and any other projects which the Committee considers beneficial to the constituency, including joint efforts with other constituencies, then draw up a priority projects list both immediate and long term, out of which the list of projects to be submitted to Parliament in accordance with section 12 shall be drawn.

(5) The elected Member of Parliament for every constituency shall be chairperson of the Constituency Development Committee unless he or she opts out in which case the Committee shall elect one amongst themselves to be the Chairperson.

~~(4)~~ (6) The quorum of the Constituency Development Committees shall be one half of the total membership.

(7) The term of office of the members of the Constituency Development Fund Committee shall be three years renewable but shall come to an end upon the appointment of a new Constituency Development Fund Committee in a manner provided for in this Act.

(8) Whenever there is a new Member of Parliament through a general election or by-election, the new Member of Parliament shall constitute and convene a new Constituency Development Fund Committee;

Provided that-

(a) the Constituency Development Fund Committees existing prior to a parliamentary election or by election shall continue in office until a new

Constituency Development Fund Committee is constituted after the election or by election in a manner provided for under this Act; and

(b) the list of projects shall not be changed other than at the end of the financial year or in accordance with this Act.

(9) The officer of the Board shall be the custodian of all records and equipment of the constituency during the term of Parliament and during transitions occasioned by general elections or a by election.

(10) Whenever a vacancy occurs in the Constituency Development Fund Committee by reason of resignation, incapacitation or demise of a member then the Member of Parliament shall fill the vacancy from the same category of persons where the vacancy has occurred.

(11) The Constituency Development Fund Committee shall meet at least twelve times in a year and not more than twenty four times in every financial year including sub-committee meetings.

(12) The Constituency Development Fund Committee shall, at its discretion, determine the quantum of installments to various projects in the constituency, taking into account the disbursement received and the requirements of different projects.

Cost estimates to be realistic.

24. (1) The Constituency Development Committee shall ensure that appropriate consultations with the relevant Government departments is done to ensure that

cost estimates for the projects are as realistic as possible.

(2) The Constituency Development Committee shall rank the projects in order of priority and whenever, in the opinion of the ~~Minister~~ **Board**, the total cost of the projects listed exceed the ceiling for a particular constituency, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

Personal awards to be excluded

25. (1) A project or any part thereof which involve personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 12 of the Act.

~~————— (2) ——— Notwithstanding the provisions of subsection (1), an education bursary scheme shall be considered as a development project for purposes of the Act, provided that such a project shall not be allocated more than 10% (ten per centum) of the total funds allocated for the constituency in any financial year.~~

(2) Notwithstanding the provisions of subsection (1), an education bursary scheme, mocks and continuous assessment tests shall be considered as a development project for purposes of the Act provided that such a project shall not be allocated more than fifteen per centum (15%) of the total funds allocated for the constituency in any financial year”.

Counter-part funding to be permitted.

26. For the purposes of this Act, the ~~National~~ **Committee Board** may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined

unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

PART V – CONSTITUENCIES FUND COMMITTEE

Establishment of the Constituencies Fund Committee.

27. (1) The National Assembly shall, in accordance with its Standing Orders, establish a Select Committee to be known as the Constituencies Fund Committee consisting of a chairman and not more than ten other members of Parliament who are not Ministers or Assistant Ministers of Government.

(2) In determining the membership of the Constituencies Fund Committee, the National Assembly shall ensure proportionate representation of the Parliamentary Political Parties.

Provided that the term of office of the members of the committee shall be three years renewable or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier.

(3) The procedures and rules for the operations of the Constituencies Fund Committee shall be governed by the Standing Orders of the National Assembly.

(4) The functions of the Constituencies Fund Committee shall be –

- ~~(a) to consider project proposals submitted from various constituencies in accordance with the Act and make appropriate recommendations to the Clerk of the National Assembly;~~
- (a) to determine the allocation and distribution to each constituency, of the amounts collected under section 4(2) and the**

utilization of any unspent funds intended for use by the Board under this Act;

- (b) to consider and report to Parliament, with recommendations, names of persons required to be approved by Parliament under this Act;
- (c) to consider and recommend to Parliament any matter requiring action by the National Assembly pursuant to the provisions of this Act;
- (d) to oversee the implementation of this Act and in this respect, shall after every two years submit a report to the National Assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of funds repayable into the Fund in accordance with section 4 of the Act.
- (e) to oversee the policy framework and legislative matters that may arise in relation to the Fund;
- (f) to continually review the framework set out for the efficient delivery of development programmes financed through the Fund; and
- (g) to carry out any other functions relevant to the work of the Fund.

(5) The Committee may make reports other than the statutory report stated in sub section 4 (d) to appraise the National Assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

Constituencies Fund
Committee to

~~28. (1) The Constituencies Fund Committee shall scrutinize the list of projects received by the Clerk~~

~~scrutinize proposals.~~

~~pursuant to this Act.~~

~~————(2). The Constituencies Fund Committee shall then minute all the project proposals received from every constituency then submit the list of projects to the Clerk for onward transmission to the Minister.~~

Monthly reports on projects and disbursements.

28. The Board shall, on a monthly basis, submit a report to the Constituencies Fund Committee detailing-

(a) a summary of the project proposals received from the constituencies in the preceding month and indicating the approval status of such projects; and

(b) a summary of the status of disbursements of funds to the constituencies for that preceding month;

(c) a summary of the status of disbursements from the Treasury to the National Account.

~~Proposals to be included in the printed estimates.~~

~~————29. (1) The Minister shall ensure that the list of constituency based projects forwarded to him by the Clerk are included in the printed estimates before the Minister presents the annual Government budget to the National Assembly.————~~

~~————(2) The estimates for the projects submitted under this Act shall be printed in a separate document among other printed estimates.~~

Funding of listed projects.

29. The Board shall ensure that the list of projects forwarded to it by each constituency is, upon approval, funded in accordance with the Act.

PART VI – IMPLEMENTATION OF PROJECTS

Government
department to
implement.

30. (1) Projects under this Act shall be implemented by the ~~relevant department of Government in a district~~ **project committee in each case, with the assistance of the relevant department of Government** and all payments through cheques or otherwise shall be processed and effected in accordance with government regulations for the time being in force.

(2) Where a particular project involves several sectors and therefore several Government departments, then the Government department under which the project is listed ~~in the printed estimates~~ shall take lead in the implementation of the project.

(3) Where a project in a constituency involves the purchase of equipment, such equipment shall remain for the exclusive use of that constituency and in the event of disposal of such equipment the amount realized shall be paid into the account of that constituency.

(4) The Constituency Development Committee shall be responsible for monitoring the implementation of projects and may designate a sub-committee, a locational committee or a project committee, the functions of monitoring an on-going project.

(5) All fixed and movable assets, including equipment bought under this Act shall be the property of the Board to be insured in the name of the Board.

Provided that-

- (a) such property shall bear the name and number of the constituency as delineated by the Electoral Commission of Kenya; and**

(b) equipment bought for institutions shall remain the property of those institutions.

(6) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (5) shall be credited to the account of the constituency from whose funds the asset was acquired.

Procurement of
Services and Works.

31. (1) All works and services relating to projects under this Act shall be sourced using existing Government procurement regulations.

~~(2) All tenders and quotations shall be tabled at a meeting of the Districts Projects Committee and the committee shall indicate that they have no objection to the award through a minuted resolution before the tender of quotation is awarded.~~

Department to
maintain records.

32. The departmental head of the relevant Ministry in each district shall oversee projects under his docket and shall keep and maintain records of the disbursements of funds and progress of the projects funded under this Act.

Returns to
Constituencies
Development Fund.

~~33. (1) The District Development Officer in every district shall compile and maintain a record showing all receipts and disbursements on a monthly basis in respect of every project under this Act and shall submit annual returns to the National Committee not later than sixty (60) days after the end of every financial year.~~

~~(2) The District Development Officer, in every district, shall make such interim returns as the National Committee shall, by resolution, deem necessary in order to facilitate the release of the next tranche of funds as specified in section 47(2) of the Act.~~

Record of receipts and disbursement.

33. The officer of the Board in every constituency shall compile and maintain a record showing all receipts and disbursements on a monthly basis in respect of every project and sub-project under this Act and shall-

(a) table such record at a meeting of the Constituency Development Fund Committee in every month ; and

(b) submit a summary of the record for the year to the Constituency Development Fund Committee not later than sixty days after the end of every financial year.

Accounts and audit.

34. All funds received under this Act shall be audited and reported upon by the Controller and Auditor-General.

Community Initiatives to be eligible

35. (1) Projects initiated by a community shall be eligible for support under this Act provided that such projects shall be submitted with the other projects in conformity with the requirements of this Act.

(2) Pursuant to subsection (1), a community shall, maintain an elected committee to represent the interests of that community during and after the implementation of the project and such a committee shall conform with established Government regulations in the discharge of its functions.

Departmental head to be represented in project committees.

36. (1) Where a community initiates a project and a project committee is maintained by the community, the departmental head of the Government Ministry under whose docket the project falls shall be an ex-officio member of such a committee and ~~shall have the power to~~ **may** appoint a representative to the committee from among Government officers in the constituency.

(2) A representative appointed under subsection (1), shall not have the right to vote but ~~shall~~ **may** attend each and every meeting of such a committee and shall receive minutes of the deliberations of the committee.

On-going projects to be evaluated.

37. Any on-going or existing project initiated by a community prior or after the commencement of this Act, and which is intended to be supported under this Act, shall undergo a technical and financial evaluation by the relevant departmental head in a district, and the project status documented, before it is listed for support in accordance with the provisions of this Act.

Community interests to be represented.

38. If a community requests, it shall be given a chance to nominate representatives to represent their interests in any project being undertaken in their area.

PART VII - DISTRICT PROJECTS COMMITTEE

Establishment of District Projects Committee.

39. (1) There shall be established, for every district, a committee to be known as the District Projects Committee whose main function shall be to coordinate the implementation of projects financed through the Fund.

~~— (2) The District Projects Committee shall also perform such other functions as may be allocated to it by the National Committee from time to time.~~

(3) The District Projects Committee may, in the discharge of its functions under this Act, make official or impromptu visits to projects at such times as it may deem appropriate.

Membership.

40.(1) The members of the District Projects Committee shall be –

(a) the members of Parliament in that district,

whether elected or nominated.

- (b) all chairmen and mayors of local authorities in the district;
- (c) the District Commissioner of the district;
- (d) The District Development Officer of the district who shall be the secretary to the Committee and the convenor of a new committee pursuant to subsection (7);
- (e) the chairpersons of the Constituencies Development **Fund** Committee; and
- (f) the District Accountant of the district.

(2) All district departmental heads in a district under whose docket the various projects fall may attend District Projects Committee meetings as ex-officio members, at the invitation of the District Projects Committee.

(3) The members of the District Projects Committee shall elect a chairperson from among the members of the Committee who are elected members of Parliament of elected councillors for a term of ~~two~~ **three (3)** years or part thereof until the end of a term of Parliament.

(4) The quorum for any meeting of the District Projects Committee shall be one half of the members and for the purposes of this section immediate past members of a dissolved Parliament shall remain members of the District Projects Committee until a new District Projects Committee is convened pursuant to the provisions of subsection (7).

(5) Meetings of the District Projects Committee shall be held at least once ~~every three months~~ **annually but not more than six (6) times in a year.**

~~(6) All District Project Committees and all Constituency Development Committees shall be dissolved upon the election of a new Parliament and no payments shall be made from the Constituency Accounts until the new committees are formed.~~

(6) All District Project Committees existing prior to a parliamentary election shall stand dissolved upon the dissolution of Parliament.

(7) The new District Projects Committees ~~and the Constituency Development Committees~~ shall be constituted ~~within thirty~~ **shall be constituted within sixty** days of a new Parliament being inaugurated.

PART VIII - ROLE OF THE DISTRICT PROJECTS COMMITTEE

Member of Parliament to table proposals.

41. The member of Parliament for each constituency shall table a list of the projects for that constituency at a meeting of the District Projects Committee convened for that purpose.

Duplication of projects to be avoided.

42. The District Projects Committee shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section or sector of a community traversing several constituencies in a district.

District Projects Committee to approve.

~~43 (1) The District Projects Committee shall examine the list of projects submitted under section 41 and where there are no duplication of projects, recommend the list of projects for onward transmission to the Clerk through the member of Parliament for that~~

constituency.

~~———— (2) The District Projects Committee shall, however, not unreasonably withhold recommendation of projects submitted under this Part.~~

District Projects Committee to prepare list.

43. The District Projects Committee shall, at the beginning of every financial year, prepare and circulate to the various Constituency Development Fund Committees in that district, a list of other Government allocations for various projects in the district.

Provided that the existence of another allocation by Government to a project in the constituency shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

PART IX - FINANCE AND ADMINISTRATION

~~Other officers of the Fund.~~

~~———— 44. The Minister may designate such other officers as he considers necessary, but not more than ten, for the proper management of the Fund.~~

Staff of the Board .

44 The Board may appoint such officers and other staff as are necessary for the proper management of the Fund and discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Provided that the principal management structure of the Board shall be established or varied by the Board with the concurrence of the Constituencies Fund Committee.

Constituency account.

45. (1) For the purpose of disbursement of funds under this Act there shall be opened and maintained a constituency account for every constituency at any

commercial bank, approved by the Minister, into which all funds shall be kept and such an account shall be known by the name of the constituency for which it is opened.

(2) The bank account opened pursuant to subsection (1), shall be separate from that of the District Treasury.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a constituency account and the signing instructions shall be such that there shall be at least one signature of a nominee from the District Projects Committee and at least one signature of a nominee of the Constituency Development **Fund** Committee and none of the signatories shall be members of Parliament or councillors.

(4) Funds from the constituency account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of section 8 of the Act.

~~(5) Each and every payment out of the constituency account shall strictly be on the basis of a minuted resolution of the Constituency Development Committee.~~

(6) Every payment or instruction for payment out of the constituency fund account shall be strictly on the basis of a minuted resolution of the Constituency Development Fund Committee.

(7) All receipts, savings and accruals to the constituency account and the balances thereof at the end of each financial year shall be retained in the constituency **fund** account for the purposes for which the account is maintained.

(8) All unutilized funds shall remain in the

constituency account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be ~~returned to the Fund in accordance with section 9~~ **retained in the account until the end of the financial year when they may be reallocated in accordance with this Act.**

(9) Any accruing revenues, interest and liabilities from any constituency account shall be declared to the ~~National Committee~~ **Board** together with the annual returns.

Bank account
of the Fund.

46.(1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the ~~Officer administering the Fund and two other persons appointed by the National Committee from among its members~~ **Chief Executive Officer and three other persons appointed by the Board from amongst its members.**

~~(3) The signature of the Officer administering the Fund shall be mandatory on all payment cheques and or instruments intended for actual release of money from the Fund.~~

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and or instruments intended for actual release of money from the fund, plus any two of the other three signatories.

Record of
disbursements to be
kept.

47.(1) An accurate record of all disbursements made for projects ~~in each constituency shall be kept and updated every month by the Officer administering the Fund.~~ **to every constituency shall be kept and updated**

every month by the Board.

~~(2) The disbursement of funds to the constituency account shall be effected within the first quarter of each financial year with an initial amount equivalent to 25% of the total estimated amount for the year and thereafter the constituency account shall be replenished in five equal installments of 25% as soon as returns are received from the constituency showing an equivalent amount expended from the constituency account.~~

(2) The disbursement of funds to the constituency fund account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five of the annual allocation for the constituency and thereafter the constituency fund account shall be replenished in three equal installments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Minister shall table an annual report on the activities, operations and expenditure under the Act.

PART X - MISCELLANEOUS PROVISIONS

~~Personal emoluments. — 48. (1) The personal emoluments of Government officers working or involved in the management of the Fund shall be determined by the Minister in consultation with the National Committee and shall be provided under the recurrent expenditure of the Government.~~

~~— (2) Out of pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers may be reimbursed;~~

~~provided that not more than 3% (three per centum) of the total allocation in the financial year may be used for this purpose.~~

~~—(3) Sitting and other allowances for the members of the National Committee shall be fixed by the Minister in consultation with the Constituencies Fund Committee.~~

Finances of the Board.

48. (1) The expenditure for running the Board and related purposes shall be set aside at the beginning of the financial year and not more than three per centum of the total allocation to the Fund in the financial year may be used for this purpose, the annual budget of which shall be approved by the Minister with the concurrence of the Constituencies Fund Committee, and expenses shall not be incurred until such approval is accorded.

(2) The Board shall, at the end of each financial year, submit to the Constituencies Fund Committee a statement showing the balance or shortfall, if any, arising out of its approved annual budget for that year and the Board shall, with the concurrence of the Constituencies Fund Committee, determine the manner in which such balance or shortfall shall be spent or met respectively.

(3) The personal emoluments of Government officers working or involved in the management of the Fund shall be provided for under the recurrent expenditure of Government but any other emoluments or payments to such officers from the Fund shall be determined by the Minister with the concurrence of Constituencies Fund Committee.

(4) Sitting and other allowances for the members of the District Projects Committee and

Constituency Development Fund Committee shall be fixed by the Board with the concurrence of the Constituencies Fund Committee and shall be paid out of the funds set aside for the Board under subsection (1).

(5) The accounts of the Board shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No.12 of 2003

Minister to make regulations.

49. (1) The Minister may make regulations for the smooth running of the Fund and such regulations shall be approved by Parliament before implementation.

(2) The Minister may amend any of the Schedules through a notice in the Gazette, provided that such amendments shall first be approved by Parliament before implementation.

Provisions in the Act are complimentary.

50. (1) The provisions of this Act shall be complimentary to any other development efforts by the Government or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any or other development programmes by the Government or any other agency.

(2) For the avoidance of doubt, normal Government development allocations shall continue alongside the projects funded under this Act.

Offences and penalties.

51. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, shall be guilty of an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding two

hundred thousand shillings or to both.

Dispute resolution.

52. (1) All complaints shall be forwarded to the Board.

(2) Disputes shall be referred to the Board in the first instance and where necessary an arbitration panel shall be appointed by the Minister who shall consider and determine the matter before the same is referred to court.

(3) Subject to this Act, no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.

Transition from National Committee to the Board.

53. (1) In this section-

“commencement day” means the day this Act comes into operation;

“this Act” means this Constituencies Development Fund (Amendment) Act, 2007;

(2) On the commencement day, all the funds, assets and other property both movable and immovable, which immediately before such date were vested in the National Committee, shall by virtue of this subsection, vest in the Board.

(3) On the commencement day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the National Committee shall, by virtue of this subsection, be deemed to be vested in, imposed on or enforceable against the Board .

(4) Any reference in any written law or in any document or instrument to the National Committee shall, on and after the commencement day, be construed to be a reference to the Board.

(5) The annual estimates of the National Committee for the financial year in which the commencement day occurs shall be deemed to be the annual estimates of the Board for the remainder of that financial year.

(6) The administrative directions made by the National Committee or by the Minister which are in force immediately before the commencement day shall, on and after such day, have force as if they were directions made by the Board or the Minister under this Act.

(7) Any person who is an officer or employee of the National Committee shall, immediately before the commencement day shall be deemed to be an officer or employee of the Board.

Provided that such person shall, within a period of six months from the commencement day, exercise his or her option either to—

- (a) enter into a written contract of service with the Board , whereupon his or her service with the Government shall be deemed to have been terminated without right to severance pay but without prejudice to all other remuneration and benefits payable upon such termination; or**
- (b) be re-deployed by the Government.**

(8) The members of the National Committee and the Officer administering the Fund appointed under sections 5 (2) (e) and 7 (2) of the Act respectively (which sections are herein replaced) shall continue in office as members of the Board and the Chief Executive Officer respectively until when a new Board and Chief Executive Officer are appointed in accordance with this Act

Provided that the appointment of a new Board and Chief Executive Officer in accordance with this Act shall be made within sixty days from the commencement day.

FIRST SCHEDULE **(Sec. 5(3))**

~~LIST OF ORGANIZATIONS TO NOMINATE PERSONS TO THE NATIONAL COMMITTEE~~

- ~~• The Kenya Farmers Union.~~
- ~~• The Institute of Engineers of Kenya.~~
- ~~• The Kenya National Chamber of Commerce.~~
- ~~• The Catholic Church.~~
- ~~• The Kenya National Union of Teachers of Kenya.~~
- ~~• The NGO Council of Kenya.~~
- ~~• The National Council of Churches of Kenya (NCCK)~~
- ~~• The Supreme Council of the Kenya Muslim (SUPKEM)~~

FIRST SCHEDULE

(section. 5(5))

LIST OF ORGANIZATIONS TO NOMINATE PERSONS TO THE BOARD

- The Kenya National Federation of Agricultural Producers.
- The Institution of Engineers of Kenya.
- The Kenya National Chamber of Commerce and Industry.
- The Kenya Episcopal Conference.
- The Kenya National Union of Teachers.
- The National Council of Churches of Kenya.
- The Supreme Council of the Kenya Muslims.
- The Institute of Certified Public Accountants of Kenya

THIRD SCHEDULE (s. 15)

STANDARD PROJECT DESCRIPTION FORM

(To be completed in consultation with District departmental head)

Constituency: District Province

Project Number Project Title

Relevant Government Department

Status of projects (tick one) New Extension ... On-going

Rehabilitation

Brief statement on progress at time of submission

.....
.....
.....

Financial year under reference 1st July To 30th June

Original Cost estimates, in Kshs. dated

Amount allocated last financial year

Person completing form: Signature

Name Position

Date

THIRD SCHEDULE

(section. 15)

STANDARD PROJECTS DESCRIPTION FORM

Constituency Name.....Financial year.....

Project No.....Project Title.....

Amount allocated this Financial Year.....

Brief description of the Project.....

.....
.....

Sub projects

Number	Title	Amount
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.....
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.....
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.....
-------	-------	-------

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TOTAL.(attach continuation page if necessary)

Signature.....Date.....

...

Name.....Position.....

..

SIXTH SCHEDULE

(section .6A)

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

**Tenure of
office.**

1. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for not more than two consecutive terms.

**Vacation of
office.**

2. (1) A member other than an ex-officio member may-
(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister on recommendation of the Board if the member

-

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

(2) The Chairperson shall not be removed from office

unless such removal is in accordance with sub paragraph (1).

Meetings.

3. (1) The Board shall meet not less than six and not more than eighteen times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total 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.

(4) The quorum for the conduct of the business of the Board shall be eight members.

(5) The Chairperson shall when present, preside at every meeting of the Board but the members present shall elect one member 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 thereat.

(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) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any

committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Board.

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

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

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its committees.

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

Disclosure of interest.

5. (1) A member who has an interest in any contract, or other matter present at a meeting 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.

(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) shall cease to be a member of the Board upon direction of the Minister.

Contracts and instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Common seal.

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

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the Chief Executive Officer and one member nominated by the Board and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the Chief Executive Officer and that member nominated by the Board.

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.