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THE LEADERSHIP CODE (AMENDMENT) ACT, 2021

An Act to amend the Leadership Code Act, 2002, to clarify what constitutes conflict of interest; to require all public officers to declare their income, assets and liabilities to the Inspector General; to extend the jurisdiction of the Leadership Code Tribunal to complaints made by any person aggrieved by the decision of the Inspectorate under section 7(7) of the Code; to prescribe penalties for breach of the Code and to provide for other related matters.

DATE OF ASSENT: 23rd April, 2021

Date of Commencement: 7th May, 2021

BE IT ENACTED by Parliament as follows:

1. Amendment of section 2 of the Leadership Code Act, 2002

The Leadership Code Act, 2002, in this Act referred to as the principal Act, is amended in section 2 (1), by substituting for the definition of “authorised person,” the following—

“authorised person” means a person or body authorised by law to discipline a leader or a public officer in relation to whom the expression is used;”

2. Amendment of section 4 of principal Act

The principal Act is amended in section 4 by inserting immediately after subsection (9), the following—

“(10) A leader who makes a declaration under this section, and is found not to have declared certain assets, income and liabilities or if the declaration is found to be false, the leader shall be taken to have breached this Code.

(11) A leader who fails without reasonable cause to submit a declaration under this section commits a breach of this Code.”

3. Replacement of section 4A of principal Act

The principal Act is amended by substituting for section 4A the following—

“4A. Declaration of income, assets and liabilities by public officer

(1) A public officer who is not a leader and to whom section 4 of this Code does not apply, shall—

- (a) within three months after the commencement of this Code;
- (b) within three months after appointment to the public service; and
- (c) thereafter, every five years during the month of April,

submit to the Inspector General, a written declaration of his or her income, assets and liabilities in the prescribed form.

(2) For the purposes of a declaration under subsection (1), the public officer shall only declare the income, assets and liabilities in which he or she has an interest.

(3) In this section, a public officer shall be taken to have an interest where—

- (a) in case of an income or an asset—

- (i) it is owned by the public officer;
 - (ii) it is jointly owned by the public officer with another person;
 - (iii) it is held in trust by the public officer for another person; or
 - (iv) it is contained in a joint account for the benefit of the public officer and another person;
- (b) in case of a liability, it was acquired, guaranteed or is payable by the public officer, on his or her behalf or on behalf of another person.

(4) A public officer making a declaration under this section shall ensure that all the information contained in the declaration is true and correct to the best of his or her knowledge.

(5) A public officer who makes a declaration under this section, and is found not to have declared certain assets, income and liabilities or if the declaration is found to be false, the public officer shall be taken to have breached this Code.

(6) A public officer, who without justifiable cause submits a declaration to the Inspector General, any time after the period prescribed in subsection (1) commits a breach of this Code.

(7) A public officer who fails without reasonable cause to submit a declaration under this section commits a breach of this Code.

(8) The Inspectorate may verify the contents of a declaration submitted by a public officer under this Code.

(9) The Inspectorate shall, within seven days of making the decision to verify the contents of a declaration under subsection (8)—

- (a) inform the public officer of the decision, by notice in writing; and
- (b) appoint a date on which the verification shall commence.

(10) The Inspectorate may, in verifying the contents of a declaration submitted by the public officer—

- (a) access or require the production of any document relating to the income, assets and liabilities declared by the public officer, in possession of the public officer or any other person or institution;
- (b) access the physical location of all immovable property declared by a public officer;
- (c) access bank accounts or any other financial records relating to a declaration made by the public officer; or
- (d) do any other act necessary for the enforcement of this Code.

(11) The Inspectorate shall during the verification process, comply with the rules of natural justice.

(12) A public officer whose declaration is being verified may, during the verification process be present personally or be represented by any person of his or her choice.

(13) The Inspectorate shall, three months after carrying out the verification of the contents of a declaration, submit to the public officer, a report of the findings of the verification.

(14) Where the verification reveals a breach of this Code, the Inspectorate shall take any action prescribed under this Code.

(15) The Inspectorate shall ensure that the verification process is carried out within a reasonable time, in any case not later than ninety working days from the date of commencement of the verification.”

4. Replacement of section 4B of principal Act

The principal Act is amended by substituting for section 4B the following—

“4B. Prohibition of anticipatory declaration of income, assets and liabilities.

A leader or public officer who includes in a declaration submitted to the Inspectorate, income, assets or liabilities that he or she does not own or has not yet acquired or has no interest in, at the time he or she makes a declaration, commits a breach of this Code.”

5. Amendment of section 4C of principal Act

The principal Act is amended in section 4C—

(a) by substituting for subsection (5), the following—

“(5) The Inspectorate shall three months after carrying out a verification of the contents of a declaration, submit to the leader, a report of the findings of the verification.”

(b) by substituting for subsection (8), the following—

“(8) The Inspectorate shall ensure that the verification process is carried out within a reasonable time, in any case not later than ninety working days from the date of commencement of the verification.”

6. Replacement of section 4D of principal Act

The principal Act is amended by substituting for section 4D, the following—

“4D. Request for verification of a leader or public officer

A person who—

- (a) obtains a declaration under section 7 of this Code;
- (b) has reason to believe that the declaration made by a leader or public officer does not reflect the actual income, assets or liabilities of the leader or public officer; or
- (c) has information concerning the income, assets or liabilities of a leader or public officer,

may, by notice in writing, avail the information to the Inspectorate and the Inspectorate may verify the information availed by the person and the declaration made by the leader or public officer.”

7. Replacement of section 5 of principal Act

The principal Act is amended by substituting for section 5, the following—

“5. Power of the Inspector General to require clarification

(1) The Inspector General may, by notice in writing require a leader or public officer to account for any matter in connection with a declaration submitted by him or her, including—

- (a) the omission of anything in the opinion of the Inspector General, that should have been included in the declaration; or
- (b) any discrepancies appearing in the declaration, or occurring between the declaration and any other statement or information available to the Inspector General,

and the leader or public officer shall comply with that requirement.

(2) A leader or public officer who, without reasonable cause, fails to comply with the Inspector General's request for clarification within sixty days after receipt of the notice, commits a breach of this Code and is liable to—

- (a) pay a fine not exceeding ten currency points per month for the initial three months after the failure to comply with the request for clarification under subsection (1);
- (b) pay a fine not exceeding twelve currency points per month for the next two months after the expiry of the period referred to in paragraph (a);
- (c) have his or her emoluments withheld until he or she complies with the request for clarification after the expiry of the period referred to in paragraph (b); and
- (d) a warning, demotion, or dismissal from office, in addition to the penalty prescribed in paragraph (c).

(3) The authorised officer shall refund the emoluments withheld under subsection (2)(c) to the leader or public officer upon the leader or public officer submitting a clarification of his or her declaration in accordance with this section.”

8. Replacement of section 6 of principal Act

The principal Act is amended by substituting for section 6, the following—

“6. Failure to submit correct information

A leader or public officer who knowingly or recklessly submits a declaration or gives an account of any matter which is false, misleading or insufficient in any material particular, commits a breach of this Code.”

9. Amendment of section 7 of principal Act

The principal Act is amended in section 7—

- (a) by substituting for subsection (7), the following—

“(7) Where the Inspectorate rejects the application or does not grant access to the declaration within the time prescribed under subsection (5), the applicant may apply to the Leadership Code Tribunal for redress.”

- (b) by inserting immediately after subsection (9), the following—

“(10) This section shall apply, with necessary modification, to declarations made by a public officer.”

10. Amendment of section 10 of principal Act

The principal Act is amended in section 10 by inserting the words “or a public officer” immediately after the word “leader”, wherever it appears.

11. Amendment of section 11 of principal Act

The principal Act is amended in section 11 by inserting the words “or a public officer” immediately after the word “leader”, wherever it appears.

12. Amendment of section 12A of principal Act

The principal Act is amended in section 12A—

- (a) in subsections (1), (2) and (5), by inserting the words “or a public officer” immediately after the word “leader”, wherever it appears;
- (b) in subsection (3) by inserting immediately before the word “public officer” the words “leader or a”;

(c) by substituting for subsection (4), the following—

“(4) Notwithstanding any direction to the contrary under subsection (3)(a), a leader or a public officer shall not influence the award of a contract to—

- (a) himself or herself;
- (b) any person related to him or her by blood or by marriage;
- (c) a business associate, agent or partner; or
- (d) a company, partnership or other entity or body in which the leader or the public officer, any person related to him or her by blood or marriage, has an interest.”

13. Insertion of section 12B in principal Act

The principal Act is amended by inserting immediately after section 12A, the following—

“12B. Abuse of public property

(1) A leader or a public officer shall protect and preserve public property under his or her personal use and shall not use such property or allow its use for any other purpose other than the authorised purpose.

(2) In this section “public property” includes any form of real or personal property in which the Government or public body has ownership; a plant, equipment, leasehold, or other property interest as well as any right or other intangible interest that is purchased with public funds, including the services of contractor personnel, office supplies, telephones and other telecommunications equipment and services, mails, automated data, public body records, and vehicles.

(3) A leader or a public officer who knowingly misuses or allows public property entrusted to his or her care to be misused, abused or left unprotected shall make good the loss occasioned to the property and the value of the property or damage to the property shall constitute a debt from the leader or public officer to the Government or public body concerned.

(4) Notwithstanding the provisions of subsection (3), a leader or a public officer who knowingly misuses or allows public property entrusted to his or her care to be misused or abused or left unprotected may, in addition to the sanctions under that subsection be—

- (a) warned or cautioned;
- (b) demoted; or
- (c) dismissed from office.”

14. Amendment of section 14 of principal Act

The principal Act is amended in section 14 by inserting the words “or a public officer” immediately after the word “leader”, wherever it appears.

15. Amendment of section 15 of principal Act

The principal Act is amended in section 15 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

16. Amendment of section 16 of principal Act

The principal Act is amended in section 16 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

17. Amendment of section 17 of principal Act

The principal Act is amended in section 17 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

18. Amendment of section 18 of principal Act

The principal Act is amended in section 18 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

19. Amendment of section 19 of principal Act

The principal Act is amended in section 19 by inserting the words “or a public officer” immediately after the word “leader” in subsections (2) (a) and (3), wherever it appears.

20. Amendment of section 19B of principal Act

The principal Act is amended in section 19B by substituting for paragraph (a), the following—

“(a) receive, examine and adjudicate—

- (i) any breach of this Code referred to it by the Inspectorate; and
- (ii) any complaint referred to it by any person aggrieved by the decision of the Inspectorate under section 7(7) of this Code;”

21. Amendment of section 19Q

The principal Act is amended by substituting for section 19Q, the following—

“19Q. Jurisdiction of the Tribunal

The Tribunal shall have jurisdiction to hear and determine—

- (a) all breaches referred to it by the Inspectorate under section 19 of this Code; and
- (b) all complaints made by persons aggrieved by decisions of the Inspectorate under section 7(7) of this Code.”

22. Amendment of section 20 of principal Act

The principal Act is amended in section 20—

- (a) in subsection (5), by inserting immediately after the word “leader” the words “or a public officer”;
- (b) in subsection (6), by inserting immediately after the word “leader” the words “or a public officer”;
- (c) by substituting for subsection (7), the following—

“(7) A leader or a public officer who is dismissed or removed from office as a result of the decision of the Tribunal, shall not hold any other public office whether appointive or elective for a period of five years from the date of dismissal or removal from office.”

23. Amendment of section 21 of principal Act

The principal Act is amended in section 21 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

24. Amendment of section 22 of principal Act

The principal Act is amended in section 22 by inserting the words “or a public officer” immediately after the word “leader” wherever it appears.

25. Replacement of section 35 of principal Act

The principal Act is amended by substituting for section 35 the following—

“35. Penalties for breach of Code

(1) A leader or a public officer who commits a breach of this Code shall—

- (a) in the case of a breach under sections 4 (10) and 4A (5), be liable to—
- (i) pay a fine not exceeding two hundred currency points;
 - (ii) a caution;
 - (iii) a demotion;
 - (iv) dismissal from office;
 - (v) have the excess or undeclared property confiscated and forfeited to the Government where it is proved that the excess or undeclared property was unlawfully acquired; or
 - (vi) forfeit the monetary equivalent of the excess or undeclared property referred to in subparagraph (v), to the Government;”
- (b) in the case of a breach under sections 4(9), 4(11), 4A (6) and 4A (7)—
- (i) be liable to pay a fine not exceeding twenty currency points per month for the initial three months of non submission of the declaration;
 - (ii) after the three months referred to in subparagraph (i), be liable to pay a fine not exceeding forty currency points per month for two months;
 - (iii) after the period of failure to submit the declaration referred to in subparagraph (ii), have his or her emoluments withheld until he or she submits a declaration;

- (iv) in addition to the penalties in subparagraphs (i), (ii) and (iii), be liable to a warning, demotion, dismissal or to vacate office;
- (c) in the case of a breach under sections 4B, 6, 11, 12A (1), 15(6) and 16(4), be liable to—
 - (i) pay a fine not exceeding two hundred currency points;
 - (ii) a demotion;
 - (iii) dismissal from office; or
 - (iv) vacate office;
- (d) in the case of a breach under subsection (6) of section 10, be liable to—
 - (i) forfeit the benefit equivalent to the gift, hospitality or benefit, to the Government or institution;
 - (ii) caution or a warning in writing;
 - (iii) a demotion;
 - (iv) dismissal from office; or
 - (v) vacate office.

(2) The authorised officer shall refund the emoluments withheld under subsection (1)(b)(iii) to the leader or public officer upon the leader or public officer submitting a declaration of his or her income, assets and liabilities in accordance with this Act.”