

16th November, 2012

LEGAL NOTICE NO. 131

THE STATE CORPORATIONS ACT
(Cap. 446)

IN EXERCISE of the powers conferred by section 3 (1) of the State Corporations Act, I, Mwai Kibaki, President and Commander-in-Chief of the Kenya Defence Forces, makes the following Order:—

THE KENYA NUCLEAR ELECTRICITY BOARD ORDER

PART I—PRELIMINARY

1. This Order may be cited as the Kenya Nuclear Electricity Board Order, 2012.

2. In this Order, except where the context otherwise requires --

"Board" means the Kenya Nuclear Electricity Board established under paragraph 3;

"Executive Chairperson" means the Executive Chairperson appointed under paragraph 7;

"Permanent Secretary" means the permanent secretary or principal secretary in the Ministry responsible for matters relating to energy;

PART 11—ESTABLISHMENT AND FUNCTIONS OF THE BOARD

Establishment of the Kenya Nuclear electricity Board.

3. (1) There is hereby established Kenya Nuclear Electricity Board.

(2) The Board shall be a bod succession and a common seal and shall capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and

(c) doing or performing all such other things or acts for the furtherance of the provisions of this Order or the performance of its functions which may lawfully be done by a body corporate.

(3) The Board shall be a successor to the Nuclear Electricity Project Committee in existence immediately before the commencement of this Order, and upon such commencement the transitional provisions set out in paragraph 21 shall apply.

Headquarters.

4. (1) The headquarters of the Board shall be in Nairobi.

(2) Subject to the provisions of any other written law, the Board may hold its meetings at any place in Kenya.

Functions of the Board.

5. (1) The functions of the Board shall be to 0

(a) promote and expedite the development of nuclear electricity in Kenya;

(b) develop policies, and propose legislation necessary for the successful implementation of a nuclear power programme;

(c) undertake public education and awareness on Kenya's nuclear power programme;

(d) identify, prepare and facilitate the implementation of a roadmap for a nuclear power programme;

(e) in collaboration with relevant Government agencies, develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;

(f) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;

(g) identify appropriate sites in Kenya for the construction of nuclear power plants and related amenities;

(h) enter into collaborative programmes related to nuclear electricity research and development with other international and national organizations;

(i) establish a library and information centre on nuclear science and technology, and

(j) perform any other duties which may be necessary for the execution of its mandate under this Order.

Powers of the Board.

6. In the performance of its functions the Board shall have power to--

(a) apply for and hold intellectual property rights over works developed by persons sponsored by the Board and enter into agreements or arrangements for their commercial exploitation or otherwise as it may consider appropriate;

(b) make proposals to the Minister for the time being responsible for energy, on policies which may be necessary for the development and promotion of nuclear energy in Kenya;

(c) formulate and review environmental, health, safety and quality standards for the nuclear energy sub-sector, in coordination with other statutory authorities;

(d) control, supervise and administer assets of the Board in such manner as best promotes the purposes for which the Board is established;

(e) receive any grants, gifts, donations or endowments on behalf of the Board and make legitimate disbursements therefrom;

(f) enter into agreements with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Board is established; and

(g) perform any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

PART III—MEMBERSHIP

Composition of the Board.

7. (1) The Board shall consist of the following members –

(a) an Executive Chairperson appointed by the President from among the persons referred to in paragraph (f);

(b) the Permanent Secretary in the Ministry responsible for energy or his representative;

(c) the Permanent Secretary in the Ministry responsible for science and technology or his representative;

(d) the Permanent Secretary to the Treasury or his representative;

(e) the Attorney-General or his representative, and

(f) not more than five other Members, not being employees of the Board, appointed by the Minister by virtue of their qualifications under subparagraph (2).

(2) A person shall be qualified for appointment under paragraph (1) (f) if such person holds a degree from a university recognized in Kenya in--

(a) law;

(b) Engineering;

(c) any nuclear related science;

(d) environment, health or public safety.

(3) In making the appointments under paragraph (2) (f) the Minister shall have regard to the principle of gender equity.

(4) The Board may from time to time co-opt into its membership any person whose skills and experience are necessary for the performance of the functions of the Board to assist in any specified matter.

(5) A person Co-opted under sub-paragraph (4) shall have no power to vote at the meetings of the Board.

Powers.

8. The Board shall have all the powers necessary for the proper performance of its functions under this Order, and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to -

- (a) manage, supervise and administer the assets of the Board in such manner as best promotes the purpose for which it is established;
- (b) determine the provisions to be made for capital, and recurrent expenditure and reserves of the Board;
- (c) open a banking account or banking accounts for the funds of the Board;
- (d) approve the annual work plan including the short and long term programs of the Board; and
- (e) do such other acts or things as may be incidental to the above.

Conduct of Business and affairs of the Board

9. The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule, but subject thereto the Board may regulate its own procedure.

Remuneration of Board members

10. The Members of the Board shall be paid such remuneration, fees or allowances for expenses as the Board may, with the approval of the Minister in consultation with the Minister responsible for finance, may approve.

Committees.

11. The Board may establish such committees as it may deem appropriate for the performance of its functions.

Delegation by Board.

12. The Board may, by resolution either generally or in any particular case delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties.

Staff of the Board.

13. (1) The Board shall establish a Secretariat made up of such number of staff employed by the Board on such terms as it may deem appropriate.

(2) There shall be a head of the Secretariat who shall be designated by the Executive Chairperson from among the staff referred to in subparagraph (1), to co-ordinate the activities of the Board.

(3) The Board may appoint such other officers and staff, as it considers proper for the efficient performance of its functions.

Common seal.

14. (1) Subject to this Order, the common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except in the manner authorized by the Board.

(2) All documents shall be deemed to be duly executed by or on behalf of the Board -

(a) where required to be under seal, they are sealed with the common seal of the Board and authenticated by the signature Executive Chairperson; and

(b) where not required to be under seal, they are authenticated by the signature of the Executive Chairperson or by that of a Member of the Board duly authorized for that purpose and instance.

Protection from personal liability.

15. Nothing done by a Member of the Board or any officer, employee or agent or any person acting on the directions of the Board shall, if it is done bona fide for executing the functions, powers or duties of the Board, render such member, officer, employee or agent or person personally liable to any action, claim or demand whatsoever.

PART 1V—FINANCIAL PROVISIONS

Funds of the Board.

16. (1) The funds of the Board shall comprise -

- (a) such sums as may be appropriated by Parliament for the purposes of the Board;
- (b) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Order or under any other written law;
- (c) monies from other sources, including loans, grants, gifts or donations to the Board; and
- (d) interest from bank and other deposits made by the Board.

Financial year.

17. The financial year of the Board shall be

- (a) the period commencing on the day on which this Order comes into operation and ending on the following thirtieth June next following, and;
- (b) subsequently, the period of 12 months commencing on the first of July and ending on the thirtieth of June of the following year.

Annual estimates.

18.(1) At least 4 months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

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

- (a) the payment of salaries, allowances and other charges in respect of the Board and staff of the Board;
- (b) provision of funds for the functions of the Board;
- (c) the payment of pensions, gratuities and other charges in respect of the staff of the Board; and
- (d) any other expenditure as may be necessary for the carrying out of the objects and functions of the Board under this Order.

(3) The annual estimates shall be approved by the Board at least two months before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval.

Accounts and audit.

19. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Board.

(2) The Board shall ensure that all money received is properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities.

(3) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the Public Audit Act. Act No 12 of 2003.

Investment of funds.

20. (1) The Board may from time to time, with approval of the Minister and concurrence by Treasury, invest any of its funds in any securities in trust fund authorized by law.

(2) The Board may, subject to approval of the Minister and concurrence of Treasury, place on deposit with such bank or banks as it may determine, any monies not immediately required for its purpose.

Transitional.

21. Upon the commencement of this Order

(a) all the assets and liabilities in vesting or attaching to the Nuclear Electricity Project Committee existing immediately before the commencement of this Order shall, upon such commencement vest in or attach to the

Board;

(b) the staff of the Nuclear Electricity Project Committee immediately before such commencement shall continue to be the staff of the Board for the remainder of their periods of appointment;

(c) the members of the Nuclear Electricity Committee in office immediately before the commencement of this Order shall continue as members of the Board unless the Board is reconstituted under this Order;

(d) all property which is vested on the Government for the use of that Committee shall, subject to all interests, liabilities, charges and obligations affecting such property, vest in the Board.

SCHEDULE (Para. 8)

Vacancy in office.

1. The office of a member of the Board, other than an ex-officio member, shall become vacant if -

(a) the member resigns by giving notice in writing, in the case of the Executive Chairperson, to the President, and in the case of any other member, to the Minister, which notice shall take effect on the date specified therein, and, where no date is specified, on the date of receipt of the notice by the President or the Minister, as the case may be;

(b) the appointment is revoked by the Minister; where the Member—

(i) becomes insolvent or enters into a composition or scheme of arrangement for the benefit his creditors;

(ii) is convicted of any criminal offence by a court of competent jurisdiction; and sentenced to imprisonment for six months or more.

(iii) is incapacitated by reason of physical or mental infirmity;

(iv) is absent from three consecutive meetings of the Board without the leave of the chairperson; or

(v) is otherwise unable or unfit to discharge the functions of the Board.

(2) Where the office of the Executive Chairperson or a member of the Board becomes vacant under this paragraph, the President or the Minister, as the case may be, may appoint another person as a replacement of the person vacating office.

Meetings.

2. (1) The Board shall meet at least four times in every financial year.

(2) Notwithstanding subparagraph (1), the Executive Chairperson may at any time, and shall, convene a meeting for the transaction of the business of the Board.

(3) The Executive Chairperson shall preside at every meeting of the Board at which he is present, but in his absence the members present shall elect one from amongst their number to preside.

(4) The quorum for a meeting of the Board shall be half of all its members.

(5) Every decision of the Board shall in the absence of consensus be by a simple majority of the members present and voting.

Disclosure of interest.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting or as soon as reasonably practicable after the commencement thereof, disclose the fact, 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 this section shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes sub paragraph (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term of six months, or to both.

Rules of Procedure.

4. Subject to this Schedule, the Board may determine rules of procedure for the conduct of its business, and shall cause to be kept records of minutes of the decision of the Board.

Dated the 5th November, 2012.

MWAI KIBAKI,
President.