



LAWS OF KENYA



## **MOMBASA PIPELINE BOARD ACT**

CHAPTER 373

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**CHAPTER 373**

**MOMBASA PIPELINE BOARD ACT**

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**CHAPTER 373**

**MOMBASA PIPELINE BOARD ACT**

[Date of assent: 29th October, 1957.]

[Date of commencement: 10th March, 1958.]

**An Act of Parliament to provide for the establishment of a board, to be known as the Mombasa Pipeline Board, for the development, supply and distribution of water within Mombasa District and elsewhere; and for matters incidental thereto and connected therewith**

[L.N. 396/1963, L.N. 649/1963, L.N. 2/1964, Act No. 19 of 1964, Act No. 12 of 1985.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Mombasa Pipeline Board Act.

**2. Interpretation**

In this Act—

“**Board**” means the Mombasa Pipeline Board established by section 3;

“**Water Resources Authority**” means the Water Resources Authority established by the Water Act, (Cap. 372);

“**water undertaker**” means a water undertaker within the meaning of the Water Act;

“**works**” includes pipelines, aqueducts, dams, chambers, pumping stations, reservoirs and filtration plants, and all structures, power lines, roads, paths and services connected therewith.

**PART II – THE BOARD**

**3. Establishment and constitution of Board**

(1) There is hereby established a Board to be known as the Mombasa Pipeline Board.

(2) The constitution of the Board and the regulation and conduct of the affairs and business of the Board shall be as provided for in the Schedule.

**4. Incorporation of Board**

The Board shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued and may, for and in connection with the purposes of this Act, purchase, hold, manage and dispose of land and other property, and enter into such contracts as it may consider to be necessary or expedient.

**5. Vesting of property in Board**

(1) All properties, assets, rights, debts, liabilities and obligations, and the benefit and burden of all contracts made by or on behalf of the Government,

which are part of, concern or relate to the Government undertakings known as the Mombasa pipeline and the Mrere pipeline (hereafter in this Act referred to as the undertakings), shall be transferred to and vest in the Board as hereinafter provided.

(2) The Minister may from time to time designate the properties, assets, rights, debts, liabilities and obligations, and the contracts made by or on behalf of the Government, which are part of, concern or relate to the undertakings, and as from the date of such designation the properties, assets, rights, debts, liabilities and obligations so designated, and the benefit and burden of the contracts so designated, shall vest in the Board without further or other assurance.

(3) (a) The Board shall pay to the Government, in such manner and on such date or dates as the Minister may from time to time require, the total amount expended by the Government on or in connection with the undertakings.

(b) For the purposes of this subsection—

“**the appropriate date**” means, in respect of any loan agreement made between the Government and any person whereby money was borrowed by the Government and used for or in connection with the undertakings, the date of the vesting of the loan agreement in the Board under or by virtue of the foregoing provisions of this section;

“**the total amount expended by the Government**” means the sum of—

- (i) all amounts paid by the Government otherwise than from moneys borrowed by the Government under any such loan agreement as aforesaid; and
- (ii) all amounts repaid, in respect of capital or interest, by the Government to any person before the appropriate date under any such loan agreement as aforesaid.

(4) If, within one month from the date specified by the Minister under paragraph (a) of subsection (3) for the payment of any amount payable by the Board to the Government under that subsection, the Board fails to pay that amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may from time to time determine.

(5) The Board may, or if the Minister so directs shall, secure the payment of any amount and interest thereon for which the Board is or becomes liable under or by virtue of this section by the issue of debentures secured upon the whole or any part of the property, assets or rights, both present and future, vested in the Board under this section.

### PART III – POWERS AND FUNCTIONS OF THE BOARD

#### 6. Functions of Board

It shall be the function of the Board—

- (a) to supply water in bulk to such water undertakers as the Minister may, after consultation with the Board, by notice in the *Gazette*, designate in that behalf;
- (b) to supply water, in bulk or otherwise, to such persons or class of persons as the Minister may, after consultation with the Board, by notice in the *Gazette*, designate in that behalf;

- (c) to do all such things as may be necessary or advantageous for securing an adequate supply of water;
- (d) to apply for and obtain all such licences, permits and other authorities as may be required by the provisions of any written law or as may be desirable.

#### **7. Powers of Board**

The Board may, for the purpose of fulfilling its functions, acquire and use any kind of property, undertaking, right or privilege, and may dispose of the same to any person other than to a member, officer or employee of the Board or to any agent or contractor appointed or employed by the Board; and may enter into any contract or obligation whether it is to be performed in Kenya or elsewhere and to do all such acts as the Board may deem necessary or expedient in fulfilling its functions.

### **PART IV – FINANCES**

#### **8. Charges for water**

(1) The prices to be charged by the Board for water supplied by it or the methods of charge for the water shall be the prices or methods from time to time authorized by the Minister; and, in the case of prices to be charged, or the methods of charge, for water supplied by the Board in bulk, that authorization shall be published in the *Gazette*.

(2) In determining the prices to be charged or the methods of charge, the Minister may, after consultation with the Board, authorize separate prices or methods for any particular person or class of persons or for any particular area.

#### **9. Fund and banking account**

The Board shall establish a fund into which all moneys received by the Board shall be paid and out of which all payments made by the Board shall be made, and the Board may, for or in connection with that fund, open a banking account or banking accounts.

#### **10. Power to raise or borrow money**

The Board, with the approval of the Treasury, may from time to time raise or borrow, whether by way of mortgage, overdraft from a bank or otherwise, such sums of money for or in connection with the exercise of its functions, powers and duties under this Act and for the purposes of this Act as may be necessary.

#### **11. Power to invest**

The Board may from time to time invest any sums standing to the credit of the Board in securities and property, approved either generally or specifically by the Treasury, and may from time to time with similar approval sell or vary any or all such securities or property.

#### **12. Estimates**

The Board shall, at such times as the Minister may direct, furnish the Minister with estimates of the Board's future revenue and expenditure and such other information as the Minister may require.

**13. Accounts and audit**

(1) The Board shall cause to be kept such books of account and other books in relation thereto, and to all its undertakings, funds, activities and property, as the Minister may from time to time require; and shall, within a period of four months after the end of its financial year or within such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

- (a) a balance sheet showing in detail the assets and liabilities of the Board, and
- (b) such other statements of accounts as the Minister may require.

(2) The accounts of the Board shall be examined, audited and reported upon annually by the Auditor-General (Corporations) or by such other person as the Minister may appoint, being a person who is a qualified accountant.

(3) The Board shall produce and lay before the auditor all books and accounts of the Board, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require from all members, officers, employees and agents of the Board such information and explanation as he may consider to be necessary for the performance of his duties as auditor.

(4) The expenses of and incidental to the audit shall be paid by the Board.

(5) The Board shall, within a period of seven months after the end of its financial year or within such longer period as the Minister may approve, submit to the Minister a report of its operations during such year, and the yearly balance sheet and such other statements of account as the Minister shall require together with the auditor's report thereon; and the Board shall, if the Minister so requires, publish them in such manner as the Minister may specify.

(6) The Minister shall lay the Board's report and the auditor's report, together with the balance sheet and such other statements of account as he may have required, on the Table of the National Assembly within fourteen days of receipt of the reports and statements by him, or, if the National Assembly is not sitting, within fourteen days of the commencement of the next sitting.

[L.N. 649/1963, Act No. 12 of 1985, Sch.]

**PART V – GENERAL****14. Compulsory acquisition**

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions of the Board shall be deemed to be public purposes.

**15. Protection from personal liability**

No matter or thing done by the chairman, vice-chairman or any other member, or any officer, employee or agent, of the Board shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act render such chairman, vice-chairman, member, officer, employee or agent, or any person acting by his directions, personally liable to any action, claim or demand whatsoever.



**16. Liability of Board for damages**

The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

**17. Power of Minister to give directions**

The Minister may, after consultation with the Water Resources Authority and the Board, give to the Board such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as appear to the Minister to be requisite in the public interest, and the Board shall give effect to any such direction.

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**SCHEDULE**

[Section 3(2), L.N. 396/1963, Act No. 19 of 1964, s. 2.]

**PART I – CONSTITUTION AND MEMBERSHIP OF THE BOARD****1. Constitution**

The Board shall consist of a chairman and eight other members, who shall be appointed by the Minister by notice in the *Gazette*.

**2. Duration of office of chairman and members**

(1) A member of the Board shall hold office for such period, not exceeding four years, as may be specified in the notice appointing him, and on the expiration of that period shall be eligible for reappointment:

Provided that a public officer appointed as a member by reference to his office shall hold office as such a member at the pleasure of the Minister.

(2) The chairman of the Board shall hold office as chairman for a period of three years.

(3) The Board shall once every year elect from amongst its members a vice-chairman who shall hold office as vice-chairman for a period of one year.

**3. Temporary members**

Where the Minister is satisfied that a member is incapacitated by illness, absence or other cause from satisfactorily performing the duties of his office, the Minister may appoint some fit person temporarily to act for the member during his incapacity, and the temporary member shall, while he so acts, be deemed to be a member of the Board.

**4. Members' expenses**

The Board may, subject to the approval of the Minister, pay to a member such remuneration as it may determine, and may pay such travelling and other expenses as may have reasonably been incurred by him by reason of his office.

## PART II – MEETINGS AND PROCEEDINGS OF THE BOARD

**5. Presiding officer**

The chairman, or in his absence the vice-chairman, or in the absence of both a member elected by the Board, shall preside at all meetings of the Board, and the vice-chairman or person presiding at any meeting shall with respect to that meeting or any business transacted thereat have all the powers of, and be deemed to be, the chairman of the Board under this Act.

**6. Meetings**

(1) The Board shall hold ordinary meetings as and when necessary, but so that ordinary meetings are held not less than twice in every year; and those meetings shall be convened by the chairman at such times and at such places as he may deem fit.

(2) The chairman, or in his absence the vice-chairman, shall at any time convene a special meeting of the Board upon receipt of a requisition signed by two members calling upon him so to do, and the special meeting shall be held not later than one month after receipt of the requisition.

(3) The chairman shall have a casting as well as a deliberative vote; and subject thereto, the decision of the majority of the members present and voting at any meeting of the Board shall be deemed to be the decision of the Board.

(4) At any meeting of the Board five members shall constitute a quorum.

(5) Subject to subparagraph (4), no act, decision or proceedings of the Board shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Board being defective.

(6) The Board may from time to time make standing orders providing for the regulation of—

- (a) the meetings of the Board;
- (b) the conduct of its business and other operations in carrying out its functions;
- (c) the duties of its officers, employees and agents.

**7. Common seal**

The common seal of the Board shall be authenticated by the signature of the chairman of the Board or of some other member authorized by the Board to act in that behalf, together with the signature of the secretary to the Board, or some other person authorized by the Board to act in that behalf, and the seal shall be officially and judicially noticed.

**8. Signification of documents**

All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the chairman of the Board, or the secretary to the Board, or any member of the Board authorized in that behalf.

## PART III – OFFICERS, EMPLOYEES AND AGENTS OF THE BOARD

**9. Appointment of officers, employees and agents**

The Board, with the approval of the Minister, may—

- (a) appoint a secretary to the Board, who shall perform such duties as the Board may determine;
- (b) from time to time appoint, at such salaries and upon such terms and conditions as it may think fit, such other officers and employees as it may deem necessary for the proper and efficient conduct of the business and operations of the Board, and may at any time terminate any such appointment;
- (c) grant pensions, gratuities or retiring allowances to any officers or employees, and may require such officers and employees to contribute to any pension or contributory scheme;
- (d) establish and make contributions to a pension or superannuation fund and a medical fund for its officers and employees;
- (e) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

**10. Delegation by Board**

The Board may, by resolution, 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 the functions or duties which the Board is authorized by this Act to exercise or perform, and either generally or in any particular case.

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