

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 19 SEP 2019

DAY:

THURSDAY

SPECIAL ISSUE

Kenya Gazette Supplement No. 117

TABLED
BY:

Hon. Aden Duall
9th August, 2019

(Legislative Supplement No. 35)

THE TABLE:

Moss Lemung

LEGAL NOTICE No. 110

THE STATE CORPORATIONS ACT

(Cap. 446)

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

THE KENYA EXPORT PROMOTION AND BRANDING
AGENCY ORDER, 2019

PART I—PRELIMINARY

1. This order may be cited as the Kenya Export Promotion and Branding Agency Order, 2019.

Citation.

2. In this order, unless the context otherwise requires—

Interpretation.

“Agency” means the Kenya Export Promotion and Branding Agency established under paragraph 3;

“Board” means the Board of Directors of the Agency established under paragraph 5; and

“Cabinet Secretary” refers to the Cabinet Secretary for the time being responsible for matters relating to export promotion and branding.

PART II—KENYA EXPORT PROMOTION AND BRANDING
AGENCY

3. (1) There is established an agency to be known as the Kenya Export Promotion and Branding Agency.

Establishment of the Agency.

(2) The Agency shall be a body corporate in accordance with section 3 of the Act.

(3) The Agency shall be the successor to—

(a) the Brand Kenya Board established by the Brand Kenya Board Order, 2008; and

L.N. No. 38 of 2008.

(b) the Export Promotion Council established on the 19th August, 1992 through Gazette Notice No. 4342 of 1992.

4. The functions of the Agency shall be—

Functions of the Agency.



- (a) to advocate, coordinate, harmonise and implement export promotion and Nation branding initiatives and policies to promote Kenyan goods and services in export markets;
- (b) to collect, collate, disseminate and serve as a repository of trade and Kenya brand information;
- (c) to provide nation branding guidelines for stakeholders' initiatives including Kenya missions abroad;
- (d) to advocate, promote and facilitate the development and diversification of Kenya's export trade;
- (e) to promote and brand Kenyan exports through knowledge-based support and information to exporters and producers including export procedures and documentation, market entry requirements, and marketing techniques;
- (f) to encourage and monitor the observance of international standards and specifications by exporters;
- (g) to provide cooperation to the export inspection agencies on quality control and preshipment inspection of export products to ensure observance of international standards and specifications;
- (h) to promote and brand Kenya as a supplier of high quality goods and services;
- (i) to ensure the harmonised application of the national mark of identity for Kenyan goods and services;
- (j) to formulate and implement strategies for improved balance of trade, foreign exchange earnings and retention;
- (k) to offer advice to Kenyan exporters including in technology upgrading, quality and design improvement, standards and product development, and innovation;
- (l) to provide export assistance services, such as distribution of trade-related information to exporters, foreign country market research, and counselling to exporters;
- (m) to co-ordinate Kenya's participation in trade promotion events including trade fairs and buyer-seller meets;
- (n) to provide market intelligence through research, analysis and monitoring of trends and opportunities in international markets that Kenyan exporters can take advantage of to increase or diversify exports;
- (o) to provide Kenyans with positive information about Kenya in order to promote national unity, patriotism and national pride;

- (p) to establish an integrated approach within Government and private sector towards international marketing and branding of Kenya;
- (q) to build national support for the nation brand with other Government Agencies, non-governmental organizations and the private sector;
- (r) to provide customised advisory services; and
- (s) to do any other thing necessary or expedient for the discharge of its functions under this order.

(2) In the performance of its functions under paragraph (1), the Agency shall be guided—

- (a) by market development, promotion and national branding;
- (b) by trade information and business counselling services;
- (c) by enterprise and product development; and
- (d) by research and policy facilitation.

PART III—BOARD OF DIRECTORS OF THE AGENCY

5. (1) There is established a Board of Directors of the Agency which shall consist of—

Board of Directors
of the Agency.

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to export promotion and branding;
- (c) the Attorney-General or his representative;
- (d) the Principal Secretary for the National Treasury;
- (e) three persons from the private sector who shall be appointed by the Cabinet Secretary;
- (f) the Chief Executive Officer who shall be an *ex officio* member without the right to vote at the meetings of the Board; and
- (g) the Corporation Secretary who shall be an *ex officio* member without the right to vote at the meetings of the Board.

(2) The appointments under subparagraphs (1)(a) and (e) shall be by notice in the *Gazette*.

(3) The tenure of the members of the Board and the Chief Executive Officer shall each be for a period not exceeding three years which may be renewed only once for a period not exceeding three years.

6. The functions of the Board shall be to—

Functions of the Board.

- (a) provide strategic advice and direction to the Agency;
- (b) approve policies that shall facilitate the development of the Agency;
- (c) recruit and appoint the Chief Executive Officer on such terms and conditions as the Board shall determine with the advice of the Salaries and Remuneration Commission;
- (d) receive, on behalf of the Agency, grants-in-aid, gifts, donations, fees, subscriptions or monies;
- (e) administer the property and funds of the Agency in such a manner and for such purpose as shall promote the functions of the Agency; and
- (f) perform such other functions as may be incidental to the foregoing.

7. A person shall be eligible to be appointed as the chairperson or a member of the Board if that person—

Qualification for appointment to the Board.

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has proven business management or other relevant professional experience;
- (c) has served in a senior management position for a period of at least six years;
- (d) has not served in the Brand Kenya Board or the Export Promotion Council as an employee in the preceding five years;
- (e) meets the requirements of Chapter Six of the Constitution; and
- (f) meets the requirements of fit and proper test.

8. (1) There shall be a Chief Executive Officer of the Agency who shall be competitively recruited and appointed by the Board on such terms as shall be determined by the Board on the advice of the Salaries and Remuneration Commission.

Chief Executive Officer.

(2) A person shall be qualified to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has at least ten years' knowledge and experience in trade or export promotion;

- (c) meets the requirements of Chapter Six of the Constitution;
 - (d) has served in a senior management position for a period of at least five years; and
 - (e) meets the requirements of fit and proper test.
- (3) The Chief Executive Officer shall be responsible for—
- (a) the day to day operations of the Agency;
 - (b) supervision, management and discipline of the staff of the Agency;
 - (c) executing the policies of the Board in respect of the mandate of the Agency;
 - (d) reporting to the Board on the performance of the Agency; and
 - (e) performing any other functions as may be assigned to him or her by the Board from time to time.

9. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board on such terms as shall be determined by the Board on the advice of the Salaries and Remuneration Commission.

Corporation
Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree in a relevant field from a university recognised in Kenya;
 - (b) is a certified public secretary and has been a member in good standing of the Institute of Certified Public Secretaries of Kenya for at least five years;
 - (c) has previously held the position of a corporation secretary for a period of at least five years;
 - (d) meets the requirements of Chapter Six of the Constitution; and
 - (e) meets the requirements of the fit and proper test.
- (3) The Corporation Secretary shall be responsible for—
- (a) providing guidance to the Board on the Board's duties, responsibilities and powers;
 - (b) ensuring that Board follows its procedures and complies with the respective laws and regulations;
 - (c) assisting the Chairperson to organise the Board's activities including meetings, agendas of meetings and issuing notices to other members of the Board;

- (d) taking and keeping the minutes of the meetings of the Board, and circulating the minutes to the members of the Board;
- (e) preparing the Board's work plans, circulating Board papers before meetings, keeping a record of attendance at meetings, keeping in safe custody the seal of the Board and a record of the seal's usage, and preparing the annual meetings of the Board;
- (f) keeping a record of the appointment letters, Notices of appointment and the written acceptance of appointment by members of the Board; and
- (g) keeping a record of conflicts of interest declared by each member of the Board.

10. (1) The Board may appoint such number of professional, technical and administrative staff for the Agency. Staff of the Agency.

(2) Without prejudice to the generality of subparagraph (1), the Board shall, with the final approval by the Cabinet Secretary, recruit Commercial Attaches through a competitive process.

(3) Any person appointed under subparagraphs (1) and (2) shall serve on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

PART IV—FINANCIAL PROVISIONS

11. The funds of the Agency shall consist of— Funds of the Agency.
- (a) such monies as may be appropriated by Parliament for the purposes of the Agency;
 - (b) such monies or assets as may accrue to the Agency in the course of the performance of its functions; and
 - (c) any monies from any other source provided or donated to the Agency.

12. The financial year of the Agency shall be the period of twelve months ending on the 30th June in each year. Financial year.

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

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Agency;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Agency;

- (c) the proper maintenance of the buildings and grounds of the Agency;
- (d) the proper maintenance, repair and replacement of the equipment and other movable property of the Agency; and
- (e) the creation of reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Agency may deem fit.

(3) The annual estimates shall be submitted to the Cabinet Secretary for approval before the commencement of the financial year to which they relate, and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Agency except in accordance with the annual estimates approved under this paragraph.

14. (1) The Agency may invest any of its funds which are not immediately required for its purposes in such securities as the National Treasury may, from time to time, approve.

Investment of surplus funds.

(2) The Agency may place on deposit with such bank or banks which are licensed to operate in Kenya by the Central Bank of Kenya any monies not immediately required for its purposes.

15. The Agency shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Board.

Books of accounts.

16. (1) The accounts of the Agency shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General.

Accounts and audit.

(2) Within a period of three months after the end of each financial year, the Agency shall submit to the Auditor-General or to an auditor appointed under subparagraph (1) the accounts of the Agency together with—

- (a) a statement of income and expenditure of the Agency during that year; and
- (b) a statement of the assets and liabilities of the Agency on the last day of the financial year.

(2) The accounts of the Agency shall be audited in accordance with the provisions of the Public Audit Act, 2015.

No. 34 of 2015.

(3) The appointment of an auditor under subparagraph (1) shall not be terminated by the Agency without the prior written consent of the Auditor-General.

(4) The Auditor-General may give general or special directions to an auditor appointed under subparagraph (1) and the auditor shall comply with those directions.

(5) An auditor appointed under subparagraph (1) shall report directly to the Auditor-General on any matter relating to the directions given by the Auditor-General.

(6) Within six months after the end of each financial year, the Auditor-General shall report on the examination and audit of the accounts to the Agency to the Cabinet Secretary and, in the case of an auditor appointed under subparagraph (1), the auditor shall transmit a copy of the report to the Auditor-General.

(7) Nothing in this Order shall be construed to prohibit the Auditor-General from carrying out an inspection of the Agency's accounts or records whenever it appears desirable and the Auditor-General shall carry out such an inspection at least once every six months.

(8) The Cabinet Secretary shall lay the report prepared under subparagraph (6) before the National Assembly as soon as reasonably practicable after the report has been submitted to him or her.

PART V—GENERAL PROVISIONS

17. The Brand Kenya Board Order, 2008 is revoked.

Revocation of L. N.
No. 38 of 2008.

18. (1) The *Gazette* Notice No. 4342 of 1992 establishing the Export Promotion Council is revoked.

Revocation of G.N.
No. 4342 of 1992.

19. Despite the provisions of paragraphs 17 and 18—

Transitional and
saving provisions.

- (a) any order, direction or appointment issued under the Brand Kenya Board Order, 2008 or made by the Export Promotion Council and every office created under the Brand Kenya Board Order shall remain valid until otherwise cancelled, revoked, varied or abolished;
- (b) any person who immediately before the commencement date of this Order held or was acting or was an employee or staff in the office established by the Brand Kenya Board Order, 2008, or in the Export Promotion Council, so far as shall be consistent with this Order, shall continue to hold or act or work in that office;
- (c) any contract, project, memorandum of understanding or any other binding instrument entered into by the Export Promotion Council or by Brand Kenya Board before the commencement of this Order shall continue to hold and be implemented by the Agency for the remainder of the instrument's term or for a maximum period of eighteen months whichever is later; and

- (d) the assets and liabilities of the Export Promotion Council and Brand Kenya Board that were acquired before the commencement of this Order shall be transferred to and vest in the Agency.

Dated the 5th July, 2019.

UHURU KENYATTA,
President.

**KENYA EXPORT PROMOTION AND BRANDING
AGENCY (KEPROBA)**

**EXPLANATORY MEMORANDUM TO THE KENYA EXPORT PROMOTION AND
BRANDING AGENCY (LEGAL NOTICE NO. 110, 2019)**

The performance of State Corporations has been a matter of on-going concern in an environment of resource scarcity and mounting needs. The enactment of the State Corporations Act Chapter 446 in 1986 for the first time created a regulatory framework for the management of state corporations. The State Corporations Act was meant to control and regulate state corporations; however, it consequently created an institutional framework with many actors, a reality that tends to undermine the effectiveness and efficiency in the sector. In Kenya, there is a pronounced need for enhancing alignment between the specific national development priorities and the priorities of many of the Government Owned Entities.¹

With the aim of addressing and achieving Government policy priorities, His Excellency The President appointed a Taskforce on Parastatal Reforms on 23rd July 2013 tasked with the responsibility of reviewing and recommending policies on management and governance of State Corporations with the aim of addressing sectoral challenges while achieving Government policy, including, the most appropriate institutional arrangement for the sectors.

The Parastatal Reforms seek to facilitate the repositioning, rationalization and consolidation of Government Owned Entities in a manner that will ensure that they are aligned to the national development agenda. In doing this, the reforms anticipated the consolidating of Investment Promotion Agencies (IPAs) to create a single, cross-sector IPA with sufficient scale, scope and resources to effectively and efficiently promote and market the country, increase domestic and foreign direct investments; and provide a seamless and empowered One-Stop-Shop for all Investor Services. The Taskforce recommended establishment of the Kenya Investment Corporation (KIC) by merging

¹ *Report of The Presidential Taskforce on Parastatal Reforms, pg. 18*

and amalgamating the mandates and functions of the investment promotion and marketing agencies, namely the Export Promotion Council (EPC), Kenya Investment Authority (KenInvest), Kenya Tourist Board (KTB), Brand Kenya Board (BKB)² noting that these Government agencies have overlapping mandates, duplicate each other's efforts and represent inefficient and ineffective use of scarce taxpayers' money.

Stakeholder views were solicited and reviewed in two waves one preceding and the other succeeding the Presidential Taskforce on Parastatal Reforms as well as sufficient public consultation. The State Corporations Advisory Committee (SCAC) engaged with Chief Executive Officers, Chairpersons and Directors of State Corporations over a series of workshops attended by 1,115 participants in a bid to solicit suggestions for change. As detailed in the Report of The Presidential Taskforce on Parastatal Reforms³, the recommendations by the Chairmen, Directors and Chief Executive Officers included among others:

- Develop standard criteria and procedure for establishment of new State Corporations and procedure for restructuring, merger and/or dissolution of the existing State Corporations with a view to removing overlaps and duplication of functions, and abolish institutions whose mandates are no longer relevant;
- Review the legal framework with a view to providing an enabling, business friendly environment for the Sector;
- Develop a sharper classification of State Corporations and different regulatory frameworks for each class;

The Presidential Taskforce on Parastatal Reforms also sought views from a two-tier cadre of respondents; general public views and institutional views through solicitations and paid advertisements in newspapers. The Taskforce received fifty (50) public views by the deadline period. The views received included the following among others⁴:

- 33% explained that intervention and regulation of governance issues is necessary for achieving State Corporation mandates;

² *Ibid* pg. 96

³ *Ibid* pg. 12

⁴ *Ibid* pg. 12

- 26% of the respondents required an examination of the mandates and functions of parastatals to establish their relevance and to facilitate elimination of functional duplication, dissolution due to unviability, amalgamation due to similar mandates and industry; and
- 12% of the respondents felt that there was need for the examination and realigning State Corporations' operations towards delivery of national development goals comprised.

Out of 257 state corporations, 98 institutional responses, representing 38.2% of the respondents, were received. These responses provided institutional views on State Corporation management and constitution. The institutional views received included the following⁵:

- 21% of the responses strongly indicated that an interrogation of mandates and functions of existing State Corporations' to confirm their relevance in national building and eliminate duplication of roles and functions was necessary;
- 17% of the institutions suggested an evaluation of the human resource capacity in terms of qualifications, knowledge and experience of Board Chairmen and members of State Corporations. They expect gender and age to be considered in line with the Constitution and that this will inform retention or replacement of directors and senior staff
- 14% of the responding institutions suggested appropriate policy be formulated for administrative and governance frameworks for different categories of State corporations in accordance with their functions and operational requirements to enhance existing capacities.

In keeping with the outcome of the Parastatal Reforms and the report prepared and submitted by the Taskforce, and in order to ensure effectiveness and efficiency, H.E. The President pronounced a policy shift in the wake of The National Exports Development and Promotion Strategy on the 31st July 2018. The President noted that the time had come to merge the Export Promotion Council and the Brand Kenya Board to make certain that Kenya's products have the best chance of reaching new markets and doing even better in their present markets in light of the growing trade balance.

⁵ *Ibid* pg. 14



Kenya's trade deficit grew between June 2018 and June 2019 from Ksh 89.6 billion to Ksh 93.5 billion. From January 2018 to June 2019, Kenya's monthly balance of trade with the Africa region has been at a deficit except for February 2019, with highest deficit registered in Jan 2018. In addition, Kenya continues to experience a narrow export range, with more exports being of raw materials hence denying Kenya job opportunities and the desired levels of export revenue.

The Kenya Export Promotion and Branding Agency was established on 9th August 2019 with the main mandate of promoting the country's exports and the Nation brand. In order to achieve this, the Agency shall seek to advocate, coordinate, harmonise and implement export promotion and Nation branding initiatives and policies to promote Kenyan goods and services in export markets. The Agency's focus is geared towards branding Kenya's goods and services to ensure that they carry Kenya's national brand as well as to assure quality, authenticity and boost market share in the export market. The Kenya Export Promotion and Branding Agency is imperative to Kenya's realization of the Big 4 Agenda as well as enhance realization of in part, Kenya's manufacturing, food security, and exports targets within projected timelines.

Enclosed herewith is the comprehensive report that was handed over to H.E. President Uhuru Muigai Kenyatta by the Taskforce on Parastatal Reforms. Also enclosed is a copy of the Kenya Export Promotion and Branding Agency Order, Legal Notice No. 110 of 2019.