

(Legislative Supplement No. 12)

LEGAL NOTICE NO. 27

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, make the following Order—

THE KENYA WATER TOWERS AGENCY ORDER, 2012

1. This Order may be cited as the Kenya Water Towers Agency Order, 2012.

Citation.

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

Interpretation.

“Agency” means the Kenya Water Towers Agency established under paragraph 3;

“biodiversity hot spot” means a unique habitat with rare and diverse animals, organisms and endangered species, which is under threat of extinction;

“Board” means the Kenya Water Towers Agency Board established under paragraph 6;

“carbon reservoir” means a pool of carbon derivatives from organic matter and its natural products;

“forest land” means an area of land declared under section 23 of the Forests Act, to be a forest area;

No.7 of 2005.

“Minister” means the Minister for the time being responsible for matters relating to the co-ordination of the rehabilitation, conservation and sustainable management of water towers in Kenya;

“Secretariat” means the Interim Co-ordinating Secretariat established under Gazette Notice No. 12058 of 2009;

“sequestration” means the capture of carbon into growing vegetation;

“watershed” means a highland area from which rivers flow in different directions into different basins;

“water tower” means an area that acts as a receptacle for rain water and that stores water in the aquifers underneath it and gradually releases the water to the springs and springs emanating from it.

3. (1) There is established a state corporation to be known as the Kenya Water Towers Agency which shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

Establishment of the Agency.

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing or performing such other things or acts necessary for the proper performance of the Agency, and which may be lawfully done or be performed by a body corporate.

(2) The Agency shall be the successor of the Secretariat.

(3) All rights, duties, obligations or assets of the Secretariat existing at the time this Order comes into operation, shall be automatically and fully transferred to the Agency and any reference in contract or document shall, for all purposes, be considered to be a reference to the Agency.

Headquarters.

4. The headquarters of the Agency shall be in Nairobi.

Functions of the Agency.

5. (1) The functions of the Agency shall be to—

- (a) co-ordinate and oversee the protection, rehabilitation, conservation, and sustainable management of water towers;
- (b) co-ordinate and oversee the recovery and restoration of forest lands, wetlands and biodiversity hot spots;
- (c) promote the implementation of sustainable livelihood programmes in the water towers in accordance with natural resource conservation;
- (d) mobilize resources from the Government, development partners and other stakeholders as well as through payment for environmental services, including carbon reservoirs and sequestration;
- (e) in consultation with the relevant stakeholders, identify water towers and watersheds for protection;
- (f) assess and monitor rehabilitation, conservation and management activities in the water towers; and
- (g) perform such other functions as the Minister may, from time to time, assign to the Agency.

(2) The water towers referred to under subparagraph (1) are set out in the Schedule.

The Board.

6. (1) There shall be a Board of Directors of the Agency which shall consist of—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Chief Executive Officer of the Agency appointed under paragraph 10;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to the co-ordination,

rehabilitation, conservation and sustainable management of water towers or his representative;

- (d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;
- (e) the Permanent Secretary in the Ministry for the time being responsible for matters relating to water or his representative;
- (f) the Permanent Secretary in the Ministry for the time being responsible for matters relating to energy or his representative; and
- (g) not more than five other members appointed by the Minister on the basis of their experience in finance and human resources, law or conservation.

(2) The Chairman and members of the Board, other than *ex-officio* members, shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

7. (1) The Board shall, be responsible for the administration, management and development of the Agency.

Functions and powers of the Board.

(2) 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—

- (a) administer the assets and funds of the Agency in such manner and for such purposes as shall promote the purposes for which the Agency is established;
- (b) receive donations, grants or other moneys on behalf of the Agency and make legitimate disbursement therefrom;
- (c) have power to enter into association and agreement with other institutions, persons, bodies or organizations, within or outside Kenya, as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Agency is established.

8. The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Agency the exercise of any powers or the performance of any of the functions or duties the Agency is authorized by this Order to exercise or perform.

Delegation by the Board.

9. The Board may co-opt such members or experts as it may consider necessary for the effective performance of its functions and duties under this Order.

Co-option of members.

10. (1) There shall be a Chief Executive Officer of the Agency who shall be appointed by the Minister on recommendation of the Board.

Chief Executive Officer.

(2) The Chief Executive Officer shall be the secretary to the Board and shall be responsible for the day-to-day operations and administration of the Agency.

(3) The Chief Executive Officer shall be appointed on such terms and conditions of service as the Minister, in consultation with the Board, determine.

Staff.

11. The Agency may employ such officers and other staff or agents as it considers necessary for the discharge of its functions and duties under this Order, upon such terms and conditions of service as the Board may, in consultation with Minister, determine.

Funds of the Agency.

12. The funds of the Agency shall consist of—

- (a) moneys appropriated by Parliament for the purposes of the Agency;
- (b) moneys or assets as may accrue to, or vest in the Agency in the course of the exercise of its powers or the performance of its functions under this Order;
- (c) any gifts, grants and other donations as may be made to the Agency; and
- (d) such amounts, as may be paid to the Agency from any public fund, created by law for the purposes of promotion of any or all the objects and functions of the Agency.

Financial year.

13. The financial year of the Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

14. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of the revenue and expenditure of the Agency for that financial year.

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

- (a) payment of salaries, allowances and other charges in respect of the Board members and the staff of the Agency;
- (b) payment of pensions, gratuities and other charges in respect to retirement benefits to the staff of the Agency;
- (c) proper maintenance, repair, and replacement of the equipment and other movable property of the Agency; and
- (d) creation of such 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 Board may consider appropriate.

(3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate and once approved the annual estimates shall be submitted to the Minister for approval.

(4) Once the annual estimates are approved, the sum provided shall not be increased without prior consent of the Board.

(5) The Agency shall not, for its own purpose incur expenditure except in accordance with the annual estimates approved under subparagraph (3), or in pursuance of an authorization of the Board given with prior written approval of the Minister.

15. (1) The Board shall cause to be kept proper books of accounts of income, expenditure, assets and liabilities of the Agency.

Accounts and Audit.

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

No. 12 of 2003.

16. The Board may invest funds of the Agency which are not immediately required for its purposes in bank deposits or other securities as Treasury may, from time to time, approve.

Investment of funds.

17. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Agency for the immediately preceding financial year.

Reports.

(2) The Minister shall lay the annual report before the National Assembly within three months of the day the National Assembly sits after the report is presented to the Minister.

(3) The Minister shall lay quarterly reports on the activities of the Agency before the National Assembly.

18. No matter or thing done by the chairman or any other member of the Board or any officer, employee or agent of the Agency shall, if the matter or thing is done *bona fide* for the purpose of executing any provisions of this Order, render the chairperson, member, officer, employee or agent or any person acting under the direction of those persons personally liable to any action, claim or demand.

Protection from personal liability.

19. The provisions of this Order shall not relieve the Agency of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any action.

Liability for damages.

SCHEDULE

(Paragraph 5 (2))

WATER TOWERS

- | | |
|------------------------|---------------------|
| 1. Aberdare Range. | 10. Mount Elgon. |
| 2. Cherangani Hills. | 11. Mount Kenya. |
| 3. Chyulu Hills. | 12. Mount Kipipiri |
| 4. Huri Hills. | 13. Mount Kulal. |
| 5. Kirisia Hills. | 14. Mount Marsabit. |
| 6. Loita Hills. | 15. Mount Njiru. |
| 7. Marmanet Forest. | 16. Ndotos |
| 8. Matthews Range. | 17. Nyambene Hills |
| 9. Mau Forest Complex. | 18. Shimba Hills. |

Dated the 28th March, 2012.

MWAI KIBAKI,
President.