

- (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 Corporation, and which may be lawfully done or be performed by a body corporate.

Object of the Corporation.

4. The Corporation shall have the following objectives —

- (a) manage commercial assets and resources of Kenya Prisons Service as shall be determined by the Cabinet Secretary;
- (b) develop and maintain meaningful work programs to fully utilize available prison labour;
- (c) to facilitate the Kenya Prisons Service in discharging its core mandate as provided for in the Prisons Act and Borstal Institutions Act;
- (d) to procure necessary machines, raw materials, tools, plants, equipment and buildings for promotion of its objects and offer for sale finished products and services;
- (e) engage with any public or private organizations to further its objects;
- (f) ensure that the corporation remains financially self-sustaining; and
- (g) to undertake any other activity relating to the objectives of the corporation.

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Headquarters of the Corporation.

5. The Headquarters of the Corporation shall be in Nairobi but the Corporation may establish branches in every county to ensure reasonable access to its services.

Board of the Corporation.

6. (1) There shall be a Board of the Corporation consisting of the following members —

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for correctional services or his or her representative;

(c) the Principal Secretary in the Ministry for the time being responsible for finance or his or her representative;

(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to industrialization or his or her representative;

(e) the Commissioner General for Prisons;

(f) four other persons appointed by the Cabinet Secretary of whom —

(i) one shall have knowledge and experience of at least seven years in matters relating to industry and manufacturing;

(ii) one shall have knowledge and experience of at least seven years in matters relating to housing and public works;

(iii) one shall have knowledge and experience of at least seven years in matters relating to agriculture; and

(iv) one shall be a youth with knowledge and experience in matters relating to innovation, technology and entrepreneurship.

(2) The nomination of board members shall take into account the principles of equality, non-discrimination, regional balance and in so doing shall ensure that not more than two-thirds of the members of the Board shall be of the same gender.

(3) A person shall be qualified for appointment as a member of the Board if such a person is —

(a) a citizen of Kenya;

(b) meets the requirement of Chapter Six of the Constitution;

(c) possesses a university degree from a university recognised in Kenya;

(d) has knowledge and experience of not less than seven years in the relevant field; and

(e) is a person or professional of good standing in the society or respective professional body.

(4) A person shall not be qualified for appointment as a member of the Board if such person—

- (a) is a member of a governing body of a political party or an employee of a political party;
- (b) is an un-discharged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months; or
- (d) has been removed from office for contravening the provisions of the Constitution or any other written law.

(5) Members of the Board shall be appointed by the Cabinet Secretary and by notice in the Kenya Gazette.

(6) The Board shall, at its first meeting elect the vice-chairperson of the Board from among its members.

(7) The chairperson and the vice-chairperson of the Board shall be of the opposite gender.

Functions of the Board.

7. The functions of the Board shall be to —

- (a) advice the Cabinet Secretary, on all relevant matters pertaining to the development, co-ordination and promotion of prison enterprises in the country as a commercial undertaking;
- (b) advice the Cabinet Secretary on the applicable earning scheme for prisoners engaged by the Corporation;
- (c) in consultation with Kenya Prisons Service and relevant government institutions, develop vocational training programmes for prisoners to be engaged with the Corporation;
- (d) establish departments within the Corporation and allocate responsibilities to such departments;
- (e) appoint, train, discipline and remove members of staff of the Corporation;
- (f) ensure the Corporation strategies are aligned with the mandate of Kenya Prisons Service, its long-term goals of self-sustainability and legitimate interests of stakeholders;
- (g) monitor performance and ensure effective and efficient utilization of Corporation's resources;
- (h) administer and manage funds of the Corporation;
- (i) align Strategic plan, policies and practices with Government directives, policies and goals;
- (j) carry out any other activity as, in the Board's opinion, will promote and facilitate the development of the industries' products and services;
- (k) produce, trade and invest in accordance with the objects of the Board; and
- (l) approve Budget and Annual Plans.

Powers of the Board.

8. The Board shall have all the powers necessary for the proper performance of the functions of the Corporation and, in particular, the Board shall have powers to —

- (a) control, supervise and administer the assets of the Corporation in such manner as best promotes the purposes for which the Corporation is established;
- (b) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) open a banking account or banking accounts for the funds of the Corporation;
- (f) invest any moneys of the Corporation not immediately required in furtherance of its objects;
- (g) set aside resources for research and development; and
- (h) create a brand and own rights to literary, artistic works designs, symbols, names and images made under the Brand.

Vacancy in the Board.

9. (1) The office of the chairperson or a member shall become vacant if the holder —

- (a) dies;
- (b) ceases to be a member of the nominating body under paragraph 5(1);
- (c) is absent from three consecutive meetings of the Board without reasonable cause;
- (d) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (e) is unable to perform the functions of the office arising out of physical or mental infirmity
- (f) is negligent or incompetent in the performance of his or her functions;
- (g) is adjudged or otherwise declared bankrupt under any law in force in Kenya;
- (h) violates Chapter Six of the Constitution; or
- (i) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

(2) The Cabinet Secretary shall —

- (a) notify every vacancy in the Gazette within fourteen days of the occurrence of the vacancy;

- (b) invite nomination of a replacement by the nominating bodies within fourteen days from the date of the Gazette Notice referred to in sub-paragraph (a); and
- (c) appoint a new member to fill the vacancy within seven days from the date of receipt of the nominations under sub-paragraph (b).

(3) Where a vacancy occurs in the membership of the Board under paragraph 6(4), the Cabinet Secretary shall appoint a new member in accordance with the provisions of this Order.

(4) An appointment to fill a vacancy shall be for the remainder of the term of the member being replaced and the new member shall be eligible for reappointment.

(5) The validity of any proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member or by the fact that a person who was not entitled to do so took part in the proceedings of the Board.

Tenure of office.

10. (1) The chairperson of the Board appointed under paragraph 5(1) (a) shall be appointed for a single term of six years and shall not be eligible for re-appointment.

(2) A member of the Board, other than a member under paragraph 5(1) (b), (c), (d), and (e) shall be appointed for a single term of five years and shall not be eligible for re-appointment.

(3) The chairperson and members of the Board shall serve on a part-time basis.

Committees.

11. (1) The Board may from time to time establish committees for the better carrying out of its functions.

(2) The Board may, with the approval of the Cabinet Secretary, co-opt into the membership of committees established under sub-paragraph (1) other persons whose knowledge and skills are found necessary for the functions of the Board.

(3) 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 of the Board or the performance of any of the functions or duties of the Board.

(4) The Board may engage the service of experts and consultants in respect of any of the functions of the Corporation.

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(5) An expert or consultant engaged under section 9(4) may be paid such fees and allowances as the Board may determine.

Remuneration.

12. The chairperson, members of the Board and staff of the Corporation shall be paid such remuneration or allowances as the Public Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Meetings of the Board.

13. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule to this Order.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

(3) The Board may co-opt any person to attend its meetings but that person shall not vote at such meeting.

Delegation by the Board.

14. 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 Corporation the exercise of any powers or the performance of any of the functions or duties the Corporation is authorized by this Order to exercise or perform.

Chief Executive Officer.

15. (1) There shall be a Chief Executive Officer of the Corporation who shall be competitively recruited and appointed by the Board.

(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 Corporation.

(3) A person is qualified for appointment as Chief Executive Officer, if such person —

- (a) is a citizen of Kenya;
- (b) holds a minimum of a bachelor's degree from a university recognized in Kenya and a minimum of seven years relevant experience in senior management; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(4) The Chief Executive Officer shall —

- (a) be responsible for —
 - (i) implementing the decisions of the Board;
 - (ii) the day-to-day administration, management and the control of other staff of the corporation; and

(iii) the arrangement of business, recording and keeping of the minutes of the Board and such other records as the Board may direct;

(b) subject to the general or special direction of the Board, manage and disburse funds of the Corporation; and

(c) perform such other functions as may be assigned by the Board.

(5) The Chief Executive Officer shall be an ex officio member of the Board with no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall hold office for a term of three years but shall be eligible for re-appointment for one further term.

(7) The Chief Executive Officer may be removed from office by the Board only for —

(a) inability to perform the functions of the office of Chief Executive Officer arising out of physical or mental incapacity;

(b) gross misconduct;

(c) incompetence or neglect of duty;

(d) violation of the Constitution;

(e) Bankruptcy; or

(f) Imprisonment for a term exceeding six months.

(8) The Board shall, before removing the Chief Executive Officer —

(a) inform the Chief Executive Officer in writing of the reasons for the intended removal; and

(b) give the Chief Executive Officer an opportunity to be heard in accordance with the provisions of the Fair Administrative Action Act.

(9) The Chief Executive Officer may, with the approval of the Board, delegate in writing any of his or her powers or functions to any other officer or member of staff on the terms specified in the instrument of delegation.

Staff.

16. (1) There shall be a secretariat of the Corporation which shall provide administrative, secretarial and other assistance to the Corporation.

(2) The Secretariat shall comprise of —

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(a) such professional, technical and administrative officers and support staff as may be appointed by the Board in the discharge of its functions; and

(b) such public officers as may be seconded by the Public Service Commission upon the request of the Corporation.

(3) The members of staff of the Corporation shall be paid such remuneration or allowances as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

Funds of the Corporation.

17. The funds of the Corporation shall consist of—

(a) moneys appropriated by Parliament for the purpose of the Corporation;

(b) moneys or assets as may accrue to, or vest in the Corporation 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 Corporation; and

(d) moneys from any other lawful source accruing to the Corporation.

Financial Year.

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

Annual estimates.

19. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of the revenue, including projected revenues to be generated from commercial activities, and expenditure of the Corporation for that financial year.

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

(a) running of the Corporation programs;

(b) proper maintenance, repair, and replacement of the equipment and other movable and immovable property of the Corporation;

(c) payment of salaries, allowances and other charges in respect of the Board members and the staff of the Corporation;

(d) payment of pensions, gratuities and other charges in respect to retirement benefits to the staff of the Corporation; and

(e) 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 Cabinet Secretary for approval:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) The Corporation shall not 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 Cabinet Secretary.

Accounts and Audit.

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

No. 34 of 2015.

(2) The accounts of the Corporation shall be audited and reported upon in accordance with the Public Audit Act, 2015.

(3) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under sub-section (4), the accounts of the Corporation together with-

(a) a statement of income and expenditure during that year; and

(b) a statement of the assets and liabilities of the Corporation on the last day of the financial year.

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

(5) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under sub - paragraph (4) and the auditor shall comply with these directions.

(6) An auditor appointed under sub-paragraph (3) shall report directly to the Auditor-General on any matter relating to the directions given under sub- paragraph (6) of this paragraph.

(7) Within a period of six months after the end of the financial year, the Auditor-General shall report on the examination and audit of the Board to the Cabinet Secretary, and in the case of an auditor appointed under sub-paragraph (4), the auditor shall transmit a copy of the report to the Auditor-General.

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

(9) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as is reasonably practicable after the report is submitted to him under this paragraph.

Investment of funds

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

Annual reports.

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

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

Protection from personal liability.

23. No matter or thing done by the Chairperson or any other member of the Board or any officer, employee or agent of the Corporation 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.

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Liability for damages. **24.** The provisions of this Order shall not relieve the Corporation 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.

Revocation. **25.** The following Legal Notices are repealed —

L.N 314 of 1988 (a) The Exchequer and Audit (Prisons Industries Fund) Regulations, 1988;

L.N 87 of 1993 (b) The Exchequer and Audit (Farms Fund), Regulations.

Transitional provisions. **26.** (1) Any person who, at the commencement of this Order, was a former staff, shall on the commencement of this Order become a member of staff of the Corporation on the same or improved terms and conditions of service:

Provided that such former staff deployed or seconded from ministries or departments may elect not to be employed by the Corporation.

(2) Where on the commencement date—

(a) any disciplinary proceedings against any former staff in the course of being heard or instituted, or have been heard or investigated by the employer but no order or decision has been made thereon; or

(b) any such former staff is interdicted or suspended, the respective Employer shall—

(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) in the case of paragraph (b), deal with such former staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced by the Corporation.

(3) Where on the commencement date, any penalty, other than dismissal, has been imposed on a former staff pursuant to disciplinary proceedings against him or her and the penalty has not been, or remains to be, serviced by such person, he or she shall on his or her transfer to the Corporation, under paragraph (2) serve or continue to serve such penalty to its full as if it had been imposed by the Corporation.

Transfer of Assets.

27. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Order and vested in, acquired, incurred or entered into by or on behalf of the Funds, shall upon the commencement of this Order, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Corporation to the same extent as they were enforceable by or against the Ministry before the commencement of this Order.

(2) Where the transfer of any property transferred to or vested in the Corporation under sub-paragraph (1) is required by any written law to be registered, the Corporation shall, within three months from the commencement of this Order or within such other period as may be prescribed in the written law, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Corporation or any person by way of registration fees, stamp duty or other taxes—

(a) make such entries in the appropriate register as shall be necessary to give effect to the transfer;

(b) where appropriate, issue to the Corporation a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) All inventions, literary, artistic works, designs, symbols, names and images generated in the course of implementation of the program whether internally by the Exchequer and Audit (Prisons Industries Fund) and the Exchequer and Audit (Farms Fund) shall become the property of the Corporation unless specifically prescribed in any contractual obligations.

Made on the, 2018.

UHURU KENYATTA,
President.