



**REPUBLIC OF KENYA**

**EXECUTIVE OFFICE OF THE PRESIDENT**

**LEGAL & INSTITUTIONAL FRAMEWORK  
FOR GOVERNANCE OF STATE  
CORPORATIONS**

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# OUTLINE



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- Categorization
- Legal Framework
- Governance Structure

## 2. Governance Framework:

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- The Public Service Commission
- The Responsible Minister
- The Treasury
- Board of Directors
- State Corporations Advisory Committee

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- The Inspectorate of State Corporations
- Performance Contracting Secretariat
- The National Audit Office
- Parliament (Public Investment Committee)
- The Public Procurement Oversight Authority (PPOA)

## 4. State Corporations Appeals Tribunal

# BACKGROUND

# DEFINITION OF A STATE CORPORATION



Government owned corporations are described by Various names such as:

- Parastatals
- State Corporations
- Public Enterprises
- Crown Corporations
- State Owned Enterprises

In Kenya we use the term State Corporations

# DEFINITION OF A STATE CORPORATION (Cont'd)



In our context the term State Corporation applies to:

- Body corporate
- Established by or under an Act of Parliament or under the Companies Act Cap. 486
- Wholly owned by the Government or by a Government agent or whose majority shares are controlled by the government or its agent.

Currently there are over 269 State Corporations in virtually all sectors of the economy.



# CATEGORIZATION

Currently the Corporations are clustered into eight categories:

- Financial
- Commercial/manufacturing
- Regulatory bodies
- Public Universities
- Training and Research institutions



# CATEGORIZATION (Cont'd)

- Service institutions
- Regional Development Authorities
- Tertiary Education and Training Institutions

This categorization was adopted in 2004 for purposes of determining remuneration but is currently under review (Presidential Taskforce)



# LEGAL FRAMEWORK

- Each State Corporation operates under a particular legal instrument – either a stand alone Act of Parliament, Articles and Memorandum of Association under the Companies Act, or a Legal notice under the State Corporations Act Cap. 446.
- They are also subject to the Constitution of Kenya 2010, The State Corporations Act (Cap. 446), Public Finance Management Act, Public Audit Act, Public Service Commission Act, Public Procurement and disposal Act, Ethics and Anti-Corruption Act, Leadership & Integrity Act, etc



# GOVERNANCE STRUCTURE

Each Corporation is headed by a Board of Directors appointed in accordance with the SCA, Cap.446 and the enabling legislation.

The Treasury and the sector ministry are represented in the Board.

The Treasury sits in all the Boards as the shareholder while the parent ministry as the policy development & oversight body.





# GOVERNANCE STRUCTURE (Cont'd)

The Board appoints a management to carry out the day-to-day executive functions of the Corporation.

The Board Chairman is non-executive as is all other Board Directors.

The Board is accountable for the management of the Corporation to the Parliament (PIC) through the sector Minister



## (ii) INSTITUTIONAL FRAMEWORK

### The President

Under the State Corporations Act (Cap.446), the President has the following responsibilities:

- Establishment of State Corporations, their reorganization and dissolution.
- Assigning ministerial responsibility.
- Appointment of Chairmen.



# INSTITUTIONAL FRAMEWORK (Cont'd)

- Giving directions of a general or specific nature to Boards with regard to execution of functions of State Corporations.
- Removal of Boards and or Board Members and nomination of a new one where a Board fails to carry out its functions in the national interest, or where performance of the Board necessitates change.



# INSTITUTIONAL FRAMEWORK (Cont'd)

## The Public Service Commission (PSC)

❖ Article 234 of the Constitution has vested in PSC powers over:

1. Promotion of values & principles (Articles 10 & 232)
2. Disciplinary control
3. Investigation, monitoring & evaluation of personnel practices
4. Efficiency and effectiveness of service
5. Developing Human resources
6. Making recommendations in respect to conditions of service, code of conduct and qualifications of officers



# INSTITUTIONAL FRAMEWORK (Cont'd)

## **The responsible Minister (Cabinet Secretary)**

- Appoints Board of Directors.
- Approves terms and conditions of service for State Corporations' staff, in consultation with SCAC.
- Approves borrowing of funds in consultation with the Treasury.
- Approves disposal of surplus moneys, in consultation with the Board and the Treasury.

# INSTITUTIONAL FRAMEWORK (Cont'd)



## The Treasury

Responsibilities of the Treasury draws mainly from Article 225 of the Constitution, the Public Finance Management Act, 2012 and the State Corporations Act, Cap.446. They include:

- Advising on the vesting of any business or property in a State Corporation.
- Establishing procedures and systems for proper and effective management of public property and accounting of public funds.



# INSTITUTIONAL FRAMEWORK (Cont'd)

- Approval of annual budgets.
- Approval of disposal of assets outside the budget.
- Superintending expenditure of funds to ensure that they can be properly accounted for.
- Tabling the Auditor-General's Report on the annual accounts of State Corporations before the National Assembly.



# INSTITUTIONAL FRAMEWORK (Cont'd)

- Recall of surplus funds to the consolidated fund where necessary.
- Approval of incentives for Board members and employees of State Corporations whose performance achieves agreed targets. This is done in consultation with SCAC.
- Developing guidelines on sanctions against Board members and employees of State Corporations whose performance is below the agreed targets. This is done in consultation with SCAC.





# INSTITUTIONAL FRAMEWORK (Cont'd)

## Board of Directors

Section 15(1) of the State Corporations Act Cap. 446 gives Boards of Directors the responsibility for management of the affairs of State Corporations.

In this regard they are accountable for the moneys, financial business and the management of State Corporations.

*(Being handled separately)*

# STATE CORPORATIONS ADVISORY COMMITTEE (SCAC)



- Review and investigate affairs of State Corporations and advise the President.
- Advise the President on establishment, reorganization or dissolution of State Corporations.
- Advise on Terms and Conditions of Service, appointments, removal or transfer of officers and staff of State Corporations. (**PUBLIC SERVICE COMMISSION**)
- Advise on secondment of public servants to State Corporations and the terms for such secondments.

# STATE CORPORATIONS ADVISORY COMMITTEE (Cont'd)



- Advice the President on removal of Board member(s) on the basis of performance or pursuant to Section 7(3) of the State Corporations Act.
- Advice the Treasury in the development of incentives for Board members and employees of State Corporations where agreed targets are achieved.
- Advice the Treasury in the development of sanctions against Board members and employees of state corporations whose performance is below target.



## (iii) OVERSIGHT

The following institutions have an oversight role under the state corporations Act and other

legislations:

- Inspectorate of State Corporations
- Performance Contracting Secretariat
- State Corporations Appeal Tribunal (SCAT)
- Auditor General
- Public Procurement Oversight Authority (PPOA)



Section 18 of the State Corporations Act creates the office of the Inspector-General (Corporations) with the following mandate:

- Advise the Government on all matters affecting the effective running of state corporations.
- Report periodically to ministers on management practices in State Corporations falling under their specific dockets.
- Report to the Auditor-General any cases of misappropriation.
- Conduct special investigations of any State Corporation on behalf of the Auditor-General or the State Corporations Advisory Committee (SCAC).
- Disallow unlawful expenditure.
- Surcharge for restitution.

# Performance Contracting Secretariat



Before the beginning of each financial year the Board is required to develop performance targets to be pursued in the following year.

The targets are developed within guidelines provided by Performance Contracting Secretariat.

The Secretariat and the Inspector–General (Corporations) work closely in the administration of performance contracts.

The Boards are responsible for achievement of the set targets and any reporting thereof

# Public Investments Committee (PIC)



- For accountability to the public, audited financial statements are submitted to the National Assembly by the Minister responsible for Finance.
- Public Investments Committee (PIC) invites CEOs and Accounting Officers to give evidence on the Auditor General's report.
- The CEO normally appears before the Committee on behalf of the Board.
- The Committee gives directions as to how the queries should be resolved and who to implement its resolution.

# STATE CORPORATIONS APPEALS TRIBUNAL



- Section 22(1) of the State Corporations Act establishes the State Corporations Appeals Tribunal for purpose of arbitration of disputes between the Inspector-general (Corporations) and persons surcharged for loss attributable to their acts of commission or omission and or negligence in the management of State Corporations.
- Unsettled disputes and grievances are escalated to the High Court for determination while enforcement of Tribunal orders can be obtained from any court





# Auditor-General

Under the Constitution 2010 and Section 12(1) of the Public Audit Act 2003, and Section 14(3) of the State Corporations Act Cap. 446, the Auditor General is responsible for audit of annual accounts of State Corporations.

The audit reports are submitted to the Minister responsible for Finance for submission to the National Assembly (PIC).



## Note

- 1. The Auditor General does not assure you that there is no misappropriation or fraud.**
- 2. You need a strong internal audit and an effective audit committee of the Board for this purpose.**

# Public Procurement Oversight Authority



- This body is established under the Public Procurement and Disposal Act, 2005 Section 8(1) with a mandate to:
  - Ensure that procurement procedures established under the Act are complied with.
  - Monitor the public procurement system and report on its overall functioning.
  - Assist to prepare manuals and standard documents to be used in connection with procurement by public entities.
  - Provide advice and assistance to procurement entities.
  - Ensure procuring entities have required capacity (Committees and Procurement professionals).



# Ahsanteni!

