

THE STATE CORPORATIONS ACT
(Cap. 446)

IN EXERCISE of the powers conferred by section 30 of the State Corporation Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, make the following Regulations:-

THE STATE CORPORATIONS (PERFORMANCE CONTRACTING) REGULATIONS, 2004

1. Citation.

These Regulations may be cited as the State Corporation (Performance Contracting) Regulations, 2004.

2. Definition.

In these Regulations, except where the context otherwise requires -

“Act” means the State Corporations Act;

“budget” means estimates of revenue and expenditure including sources thereof covering one financial year;

“Committee” means the state corporations advisory committee established under section 26 of the Act;

“chief executive” means the chief executive officer of a state corporation;

“Director” means a person appointed as such to the Board of a state corporations;

“evaluation criteria” means the standard of judgement to be applied for evaluation;

“financial year” means a period of twelve months during which the business of a state corporation is accounted for;

“incentives” means the graduated or monetary reward for a good performance based on performance evaluation;

“Inspector” means the inspector-general (corporation) appointed under section 18 of the Act;

“Minister” means the minister for the time being assigned ministerial responsibility over a state corporation and - parent Ministry - shall be constructed accordingly;

“performance” means evaluated results of achievement if agreed performance targets;

“performance contract” means a contract entered into between the Government and a state corporation;

“performance evaluation” means assessment of extent of achievement of agreed targets;

“sanction” means punitive action taken for failure to achieve agreed targets; and

“target” means a specified and agreed goal to be achieved by the Board of a state corporation.

3. Application.

Subject to the Act and any other written law, these Regulations shall apply to all state corporations.

4. Autonomy and responsibilities of Board of Directors.

(1) Subject to the Act and any other written law, every state corporation shall have all the powers necessary or expedient for the performance of its functions

(2) Subject to paragraph (1), the Board of a state corporation shall -

(a) implement budget approved by the Treasury and the parent Ministry;

(b) recruit staff including the chief executive of the state corporation;

(c) develop and negotiate with the parent Ministry performance targets for the state corporation for a specified financial year;

(d) develop, maintain and review on a regular basis the strategic plan for the state corporations;

- (e) manage the assets of the state corporation;
- (f) enter into and implement performance contracts with the chief executive of the state corporation;
- (g) submit quarterly reports of the performance of the state corporation to the parent Ministry, the Treasury and the Inspector-General (Corporations); and
- (h) perform any other duties that may be deemed necessary or expedient for the implementation of the performance contracts.

(3) Every state corporation shall submit its annual budget to the parent Ministry and the Treasury for approval not later than the end of February in every year and the parent Ministry and the Treasury shall grant such approval not later than 30th April in every year.

(4) Where the financial year of a state corporation is different from that of the Government, the corporation may, in consultation with the parent Ministry and the Treasury, make arrangements for submission of performance targets in line with the financial year of the corporation, provided that no state corporation shall begin a new financial year before signing a performance contract.

5. Responsibility parent Ministry.

The parent Ministry shall, upon receipt of the performance targets from the Board of state corporations, constitute a team of experts to -

- (a) examine and determine the adequacy of the performance targets; and
- (b) negotiate with each state corporation on the implementation of the performance targets.

6. Negotiations.

Formal negotiations between the state corporation and the parent Ministry of on the implementation of performance targets formulated pursuant to these Regulations shall be undertaken between the months of April and June in each year, except that where a financial year of a state corporation does not coincide with the Governments financial year, the state corporation shall proceed in a manner provided for in Regulation 4 (4) of these Regulations.

7. Signing of performance contracts.

(1) The performance contracts for each financial year shall be signed between the Board of a state corporation and the parent Ministry and shall be counter-signed by the Treasury every last month of the financial year in order to become effective on the first month of the financial year.

(2) The chairman and one other Board member of a state corporation shall sign the performance contract on behalf of the state corporation pursuant to paragraph (1).

8. Responsibility of parent Ministry to the Treasury.

For the purposes of implementing the performance contracts, the parent Ministry and the Treasury shall be responsible for -

- (a) negotiating and signing performance contracts with the state corporations; and
- (b) Reviewing performance targets with the state corporations.

9. Responsibility to Inspector-General(Corporations)

For the purpose of implementing the performance contracts, the inspector-general (corporations) shall -

- (a) evaluate actual results of operation and management on the basis of agreed performance targets;
- (b) determining methods for evaluating performance on the basis of specified and agreed targets;
- (c) develop evaluation criteria;
- (d) submit results of evaluation to the Treasury and the parent Ministry within three months after the end of the financial year; and
- (e) advise on the administrator of the performance contracts.

10. Minister to submit report.

The minister shall submit the results of evaluation of state corporations to the controller and auditor-general, the National Assembly and the President.

11. Removal of Director.

Subject to the provisions of any other Act, the Minister may, in consultation with the committee, and based on

results of evaluation, remove a Director of a state corporation whose performance is unsatisfactory.

12. Incentives and Bonuses.

(1) The Minister for the time being responsible for matters relating to finance may, in consultation with the committee, approve incentives for Board members and employees of state corporations whose performance achieves the agreed targets.

(2) The Minister for the time being responsible for matters relating to finance, shall in consultation with the Committee, develop guidelines on sanctions against Board members and employees of state corporations whose performance is below the agreed targets.

Dated the 4th August, 2004

MWAI KIBAKI