22nd March, 2013

LEGAL NOTICE NO. 58

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 LAPSSET CORRIDOR DEVELOPMENT AUTHORITY ORDER, 2013

PART I—PRELIMINARY

Citation.
1. This Order may be cited as the LAPSSET Corridor Development Authority, ORDER, 2013.

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

“Authority” means LAPSSET Corridor Development Authority established under Paragraph 3 (1);

“LAPSSET” means Lamu Port–South Sudan–Ethiopia Transport Corridor;

“LAPSSET Corridor” means all that piece of land covered by the Lamu Port–South Sudan and Ethiopia highways, pipelines, and railways connecting Kenya, South Sudan, Ethiopia and Lamu Port, refineries, airports, resort cities and high grand falls multipurpose project and surrounding areas;

"Board" means the LAPSSET Corridor Authority Board;

“Committee” means the State Corporations Advisory Committee;

“Director General” means the Director-General appointed under paragraph 12 of this Order;

“member” means a member of the Board of the Authority;

“staff” means the staff of the Authority;

“Projects Components” means projects within LAPSSET Corridor including—

(a) Lamu Port at Manda Bay;

(b) standard gauge railway lines from Lamu to Isiolo, Isiolo to South Sudan, Isiolo to Ethiopia, and Nairobi to Isiolo;

(c) highway from Lamu to Isiolo, Isiolo to Nadapal/Nakodok (South Sudan), and Isiolo to Moyale-Addis Ababa (Ethiopia);
(d) crude oil pipeline from Lamu to Isiolo–Nadapal/Nakodok (South Sudan), and product oil pipeline from Lamu to Isiolo–Moyale–Addis Ababa (Ethiopia);

(e) international airports at Isiolo, Lamu and Lake Turkana;

(f) resort cities at Lamu, Isiolo and Lake Turkana;

(g) merchant oil refinery at Lamu;

(h) Malindi–Garsen–Lamu Road;

(i) Isiolo–Maralal–Lokichar Road;

(j) high grand falls multipurpose power generation dam;

(k) water supply lines;

(l) power supply lines; and

(m) Fiber optic cable and communications systems.

PART II—ESTABLISHMENT

Establishment.

3. (1) There is established an authority to be known as LAPSSET Corridor Development Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—

(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) performing such other things or acts necessary for the proper performance of the functions of the Authority under the Order and which may lawfully be done or performed by a body corporate.

Headquarters.

4. The headquarters of the Authority shall be in Nairobi with field offices in Lamu, Isiolo, Lokichogio, Marsabit and Moyale.

Board of the Authority.

5. (1) The Authority shall be managed by a Board comprising of—
(a) a chairperson who shall be appointed by the President;

(b) Principal Secretary for the time being responsible for the matters relating to the office of the president

(c) Principal Secretary for the time being responsible for matters relating to finance;

(d) Principal Secretary for the time being responsible for matters relating to energy;

(e) Principal Secretary for the time being responsible for matters relating to transport;

(f) Principal Secretary for the time being responsible for tourism;

(g) five other members appointed by the President by virtue of their knowledge and expertise in the following fields-

(i) finance;

(ii) law;

(iii) management

(iv) project management; and

(v) international trade.

(h) Director-General of the Authority who shall be Secretary to the Board.

(2) The members referred to in subparagraph (1) (b), (c), (d), (e), and (f) may, in writing designate a senior officer to represent them on the Board as alternate members.

Term of office.
6. The Board member other than an ex-officio member, appointed under paragraph 5 shall serve for a term of three years and may be re-appointed for a further term of three years based on performance.

Qualifications for appointment.
7. A person shall be qualified for appointment as chairperson or as a member of the Board if the person—

(a) holds a degree from a university recognized in Kenya

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has at least ten years experience in corporate leadership.

Functions of the Authority.
8. (1) The functions of the Authority shall be to—
(a) plan, co-ordinate and sequence LAPSSET Corridor projects in collaboration with Implementing ministries and agencies.

(b) co-ordinate implementation of LAPSSET Corridor projects across implementing ministries and agencies;

(c) provide leadership, direction and guidance in operations and implementation of the LAPSSET Corridor;

(d) ensure implementation of all decisions and resolutions of the government;

(e) mobilize funds to project components using a variety of resources including budgetary resources from government, donor loans, infrastructure bonds, and private finance;

(f) in collaboration with the relevant National and County Government department, build the capacity of LAPSSET Corridor towns to manage the urban growth resulting from LAPSSET Corridor investments;

(g) promote the competitiveness and use of the LAPSSET Corridor for the transport of goods and people; and

(h) provide a forum for all stakeholders in the LAPSSET Corridor.

Powers of the Board.
9. 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 have power to—

(a) manage, supervise and administer the assets of the Authority in such a manner as best promotes the purpose for which the Authority is established;

(b) determine the provisions to be made for capital, recurrent expenditure and for reserves of the Authority;

(c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements;

(d) enter into association with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;

(e) open a bank account or bank accounts for the funds of the Authority;

(f) constitute working committees for the purpose of the performance of the functions of the Authority; and

(g) approve all projects of the Authority.
Meetings of the Board.

10. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) A meeting of a Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the chairperson in consultation with the chief executive officer shall decide that a meeting is necessary, on a date and at a time determined by the chairperson.

(3) No meeting of a Board shall be held at any place other than the registered or principal office of the Authority except with the prior written approval of the Committee.

(4) Unless three-quarters of the total membership of a Board otherwise agree, at least fourteen days' written notice of every meeting of a Board shall be given to every member of the Board.

(5) The quorum for the conduct of business at a meeting of a Board shall be two-thirds of the total number of members of a Board or the number nearest to but not less than two-thirds.

(6) The chairperson of the Board shall preside at all meetings of the Board but in the absence of the chairperson the members present shall appoint one of their number to preside at the meeting.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(8) The Board may co-opt, for such period as it may consider necessary, not more than three persons whose assistance or advice it may require, but the persons so co-opted shall not be considered as members for the purpose of forming a quorum and shall not be entitled to vote at any meeting of the Board.

(9) Subject to this Order, the Board may regulate its own procedures.

Vacancy in the Board.

11. (1) The office of the chairperson, or a member of the Board, other than an ex officio member, shall become vacant—

(a) when a member resigns by giving notice in writing to the President, which notice shall take effect on the date specified in the notice, and, where no date is specified, on the date of receipt of the notice by the President;

(b) when the appointment is revoked by the President;

(c) if the member—

(i) becomes insolvent or enters into a scheme of arrangement for the benefit of his or her creditors;

(ii) is convicted of any offence by a court of competent jurisdiction;
(iii) is incapacitated by reason of infirmity of body or mind;

(iv) is absent from three consecutive meetings of the Board without the leave of the chairperson;

(v) is otherwise unable or unfit to discharge the functions of the Board; or

(vi) dies.

(2) Where the office of the chairperson of the Board or a member of the Board becomes vacant under this paragraph, the President may appoint another person possessing the qualifications under paragraph 7.

Director-General.
12. (1) There shall be a Director-General of the Authority who shall be appointed by the Board on such terms and conditions of service as the Board may approve.

(2) A person shall be qualified for appointment as a Director-General to the Authority if the person—

(a) is a citizen of Kenya;

(b) holds at least a masters degree from a university recognized in Kenya;

(c) has at least ten years experience at senior corporate management level; and

(d) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be the Secretary to the Board and the chief executive officer of the Authority and shall be responsible to the Board for—

(a) the day-to-day management of the affairs of the Authority;

(b) the management of the funds of the Authority;

(c) the administration of the Authority; and

(d) the supervision and control of the officers and other staff of the Authority.

(4) Subject to the provisions of this Order, the Director-General shall hold office for a term of five years and may be re-appointed for a further term of five years based on performance.

Establishment of Directorates.
13. In carrying out its functions under this Order the Authority shall establish the following directorates—

(a) Directorate of transport infrastructure responsible for infrastructure development for railways, port, road and airports including fishing ports and sites;
(b) Directorate of utility infrastructure responsible for development of oil pipe line, oil refinery, water supply, electricity and renewable energy, high grand falls multipurpose dam for power generation, communications; and

c) Directorate of trade, tourism and urban development responsible for development of nodal points urban centers, Lamu metropolis, special economic zones, resort cities and other LAPSET Corridor economic activities.

Committees of the Board.
14. (1) The Authority may appoint committees of the Board—

(a) to inquire into and advise the Board on any matter concerning the functions of the Authority, as the Board may consider necessary; and

(b) to exercise the powers or perform functions of the Authority, as the Board may delegate or refer to the committee.

(2) A committee appointed under subparagraph (1) shall consist of a chairperson and other persons, whether members of the Board or not, as the Board may determine based on competence requirements.

(3) The Board may require a committee appointed under this paragraph to act jointly or in cooperation with any other committee or agency of the Authority.

Delegation by the Board.
15. 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 Authority, the exercise of any of the powers or the performance of any of its functions or duties.

Common seal.
16. (1) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Board—

(a) where they are required to be under seal, if sealed with the common seal of the Board; and

(b) where they are not required to be under seal, if executed in that behalf by a member authorized by the Board for that purpose.

(2) The common seal of the Board shall be authenticated by the signature of the Director-General and Corporation Secretary.

(3) A deed, instrument, contract or other document executed in accordance with paragraph (1) (a) or (b) shall bind the Board and its successors and may be varied or discharged in the same manner as that in which it was executed.
Protection from liability.
17. (1) A member of the Board, any officer, employee or servant of the Authority shall not be personally liable for an act which is done in good faith by such person, on the direction of the Board or in the performance of any duty or in the exercise of any power under this Order.

(2) Any expenses incurred by any person referred to in subparagraph (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Order on the direction of the Board shall, if the court holds that such act was done in good faith be paid out of the general fund of the Authority, unless such expenses are recovered by him in such suit or prosecution.

Liability for damages
18. The provisions of this Order shall not relieve the Authority 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.

Staff.
19. The Authority 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 the Treasury, determine.

Remuneration of the Board.
20. The Authority shall pay such remuneration, fees, allowances and such other reimbursement to staff and members of the Board based on existing guidelines issued by the Committee from time to time.

PART III—FINANCIAL PROVISIONS

Funds of the Authority.
21. The funds of the Authority shall consist of—

(a) moneys appropriated by Parliament for the purposes of the Authority;

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

(d) such amounts, as may be paid to the Authority from any public fund, created by law for the purposes of promotion of any or all the objects and functions of the Authority.

Financial year.
22. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.
23. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure for that year.
(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned, and in particular shall provide for—

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

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

(c) the proper maintenance of the buildings and ground of the Authority;

(d) the proper maintenance, repair and replacement of the equipment and other movable property of the Authority; and

(e) the 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 necessary.

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

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under sub paragraph (3) or in pursuance of an authorization by the Board.

24. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority together with—

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

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

(4) The accounts of the Authority shall be audited in accordance with the Public Audit Act and the Public Financial Management Act, 2012.

(5) 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 accounts of the Authority to the Board and to the President.

(6) Nothing in this Order shall be construed to prohibit the Auditor-General from carrying out an inspection of the Authority’s accounts or records whenever it appears to the Auditor-General necessary to do so and the Auditor-General shall carry out such an inspection at least once every six months.
Investment of funds.
25. (1) The Board may invest any of the funds of the Authority which are not immediately required for its purposes in such securities as Treasury may, from time to time, approve.

(2) The Board may place on deposit with such bank or banks as it may determine any money not immediately required for the purposes of the Authority.

PART IV—GENERAL PROVISIONS

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

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

(3) The President shall cause the submission of quarterly reports on the activities of the Authority before the National Assembly.

Dated the 1st March, 2013.

MWAI KIBAKI,
President.