LEGAL NOTICE NO. 233

THE STATE CORPORATIONS ACT

(Cap. 446)

IN EXERCISE of the powers conferred by section 3(1) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, make the following Order—

THE BANDARI MARITIME ACADEMY ORDER, 2018

1. This Order may be cited as the Bandari Maritime Academy Order, 2018.

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

   “Act” means the State Corporations Act;

   “Academy” means the Bandari Maritime Academy established under paragraph 3;

   “Authority” means the Kenya Ports Authority established under section 3 of the Kenya Ports Authority Act;

   “Bandari College” means the institute known as the Bandari College established by the Kenya Ports Authority to provide training in maritime transport;

   “Board” means the board of the Academy established under paragraph 5;

   “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to maritime transport; and

   “Director” means the Director of the academy appointed under paragraph 10.

3. (1) There is established an Academy to be known as the Bandari Maritime Academy.

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

   (a) suing and being sued;

   (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property; and

   (c) doing or performing such other things or acts necessary for the proper performance of its functions which may lawfully be done by a body corporate.
(3) The Academy shall be a successor to the Bandari College established by the Kenya Ports Authority pursuant to the powers of the Authority under the Kenya Ports Authority Act.

4. (1) The Academy shall—

(a) be an institution of excellence in teaching, training, scholarship, innovation and research in maritime skills;

(b) provide and advance education and training to appropriately qualified candidates, leading to the award of diplomas and certificates and such other qualifications as the Board may, from time to time prescribe;

(c) conduct examinations for such academic awards as the Board may, from time to time prescribe;

(d) implement government policy on maritime education and training;

(e) ensure the highest international maritime standards in maritime human resource development;

(f) recommend and advise the Government on the development of relevant legislation to facilitate successful implementation of maritime education and training;

(g) serve as the regional maritime centre of excellence for training for ports, terminals, logistics and maritime transport skills;

(h) establish centres of excellence in maritime education and training based on international maritime standards in maritime human resource development;

(i) partner with other institutions in furtherance of maritime education and training;

(j) serve as a national centre for motion simulator training for seagoing competencies; and

(k) perform any other functions necessary or incidental to achieving the functions of the Academy.

5. (1) The management of the Academy shall vest in a Board which shall consist of—

(a) a chairperson appointed by the President;

(b) the Principal Secretary responsible for matters relating to maritime education and training or a representative nominated in writing;

(c) the Principal Secretary responsible for matters relating to technical and vocational education or a representative nominated in writing;

(d) the Principal Secretary responsible for the National Treasury or a representative nominated in writing;
(e) the Managing Director of the Kenya Ports Authority;

(f) the Director who shall be an ex-officio member of the Board; and

(g) not more than four other members, not being public officers, appointed by the Cabinet Secretary.

(2) A person is qualified for appointment under subparagraph (1)(a) and (g) if such person —

(a) has a degree from a recognized university in the following fields—

(i) maritime training and transport;

(ii) finance;

(iii) law;

(iv) engineering;

(v) environmental science;

(vi) port management;

(vii) any other matters related to the functions of the Academy;

(b) has at least ten years experience in the relevant field, for the chairperson, and five years experience for a member of the Board; and

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

(3) In appointing the members under paragraph (1)(g), the Cabinet Secretary shall —

(a) ensure that not more than two-thirds of the members are of the same gender; and

(b) observe the principle of regional and ethnic balance.

(4) A member of the Board appointed under paragraph (1)(a) and (g) shall serve for a term of three years, renewable once upon satisfactory performance of his or her duties.

(5) The appointment of the chairperson and members of the Board appointed under paragraph (1)(g) shall be by notice in the Gazette.

(6) A member of the Board shall be paid such allowances as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.

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

(a) dies;

(b) is absent from three consecutive meetings of the Board without reasonable cause;
(c) resigns from office by notice in writing addressed to the appointing authority;
(d) is unable to perform the functions of the office arising out of physical or mental infirmity;
(e) is negligent or incompetent in the performance of his or her functions;
(f) is adjudged or otherwise declared bankrupt by a competent court;
(g) violates Chapter Six of the Constitution; or
(h) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

(2) Where a vacancy occurs in the membership of the Board under subparagraph (1), the appointing authority shall appoint a new member in accordance with the provisions of this Order.

(3) 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.

7. (1) The functions of the Board shall be to —

(a) monitor and evaluate the implementation of strategies, policies and plans of the Academy;
(b) ensure that the Academy complies with all the relevant laws, regulations, governance practices, accounting procedures and auditing standards;
(c) monitor performance and ensure effective and efficient utilization of the resources of the Academy;
(d) consider and approve the budget of the Academy;
(e) approve the appointment criteria and the terms and conditions of service of staff; and
(f) carry out any other activity which in the Board's opinion, will promote and facilitate the development of the objects of the Academy.

(2) In the performance of its functions under this paragraph, the Academy may —

(a) create, develop, apply for and hold intellectual property rights and enter into agreements or arrangements for their commercial exploitation or otherwise as the Board may consider appropriate; and
(b) do any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

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

(a) manage, control and administer the property and funds of the Academy in a manner and for the purposes which shall promote the interests of the Academy;
(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Academy;

(c) receive on behalf of the Academy, donations, endowments, gifts, grants or other moneys and make disbursements there from in accordance with the law;

(d) 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 Academy is established;

(e) open a banking account or banking accounts for the funds of the Academy;

(f) invest any moneys of the Academy not immediately required in furtherance of its objects; and

(g) perform any other functions as may be conferred on it by the Cabinet Secretary or by any other written law.

9. (1) The business and affairs of the Board shall be conducted in accordance with section 8 of the Act.

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

10. 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 Academy, the exercise of any of the powers or the performance of any of its functions or duties.

11. (1) There shall be a Director of the Academy who shall be appointed by the Cabinet Secretary on the recommendation of the Board and on such terms and conditions as the Board may determine.

(2) A person is qualified to be appointed as the Director, if that person –

(a) is a citizen of Kenya;

(b) possesses a post graduate degree in maritime, economics, management or other related field from a university recognized in Kenya;

(c) has at least fifteen years’ demonstrable knowledge and experience in matters related to maritime affairs, logistics, academic affairs or related field, five of which must be at a senior managerial level;

(d) is a member of a recognized professional body; and

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

(3) The Director shall be the chief executive officer of the Academy and shall be responsible to the Board for –

(a) the day-to-day management of the Academy;

(b) managing the funds, property and affairs of the Academy;
(c) the management of the staff of the Academy;
(d) implementation of the policies, programmes and objectives of the Academy;
(e) preparation of the strategic plan, annual plan, budget and audited accounts of the Academy for the approval of the Board; and
(f) perform such other duties as may be assigned by the Board.

The Director shall hold office for a term not exceeding three years and shall be eligible for reappointment for one further term.

(5) The Board may terminate the appointment of the Director in accordance with his terms and conditions of service for —
(a) inability to perform the functions of the office arising out of physical or mental incapacity;
(b) gross misconduct or misbehaviour;
(c) incompetence or neglect of duty; or
(d) any other ground that would justify the removal from office under the terms and conditions of service.

12. (1) There shall be a Secretary to the Board who shall be appointed by the Board, on such terms and conditions of service as the Board may determine.

(2) The Secretary shall be responsible for arranging the business of the Board, keeping records of the proceedings of the Board and shall perform such other duties as the Board may direct.

(3) In the performance of his or her duties under this Order, the Secretary shall be responsible to the Director.

(4) The Board may in the absence of the Secretary appoint any member of the Board or staff of the Academy to temporarily perform the functions of the Secretary under subparagraph (2).

(5) Any functions delegated under subparagraph (4) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

13. (1) The Academy shall employ such professional, technical and administrative officers and support staff, as the Board may consider necessary for the discharge of its functions under this Order.

(2) The Public Service Commission may, upon request by the Board second to the Academy such number of public officers as may be necessary for the proper performance of the functions of the Academy.

(3) A public officer seconded to the Academy shall, during the period of secondment, be deemed to be an officer of the Academy and shall be subject only to the direction and control of the Board.

14. (1) The Board shall, on the advice of the Salaries and Remuneration Commission, determine the salaries of the staff of the Service who are employed, seconded or deployed to the Service.
(2) The Board shall, in consultation with the Public Service Commission, determine other terms and conditions of service of the staff of the Service who are either employed, seconded or deployed to the Service.

15. The funds of the Academy shall include—

(a) such sums as may be appropriated by Parliament for the purposes of the Academy;

(b) such monies as may accrue or vest in the Academy in the course of the exercise of its powers or the performance of its functions under this Order or any other written law;

(c) gifts, grants or donations made to the Academy; and

(d) such amounts from any public funds that may be created by law for the purposes of the promotion of any and all of the objects and functions of the Academy.

16. The financial year for the Academy shall be a period of twelve months ending on the thirtieth June in each year.

17. The annual estimates of the Academy shall be prepared in accordance with the Public Finance Management Act.

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

(2) The accounts of the Academy shall be audited and reported upon in accordance with the Public Audit Act and the Public Finance Management Act.

19. (1) The Board may invest any of the funds of the Academy which are not immediately required for its purposes in such securities as the National Treasury may, from time to time, approve.

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

20. 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 Academy for the immediately preceding financial year.

21. Any person who, without the written consent of the Board, uses the words “Bandari Maritime Academy” in furtherance of, or as, or in connection with, any advertisement for any trade, business, profession or calling, commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding fifty thousand shillings or both.

22. (1) Any person who, immediately before the commencement of this Order, was a member of staff of the Bandari College shall be deemed to be a member of staff of the Academy for the unexpired period of his or her service and in accordance to his or her terms of service:
Provided that a member of staff of the Bandari College may exercise the option not to continue in the service of the Academy.

(2) The person who immediately before the commencement of this Order, was the Principal of Bandari College shall oversee the transition of the Academy for a period to be determined by the Board but not exceeding twelve months.

(3) All rights, obligations, powers and duties whether arising under any written law or otherwise which immediately before such day were vested in or imposed on Bandari College shall, by virtue of this subparagraph, be deemed to be vested in or imposed on the Academy.

(4) All the funds, assets and other movable and immovable property including land, buildings, machinery, apparatus and materials, which immediately before the coming into operation of this Order, were held by or on behalf of the Bandari College shall by virtue of this subparagraph be vested in the Academy.

(5) All actions, suits or legal proceedings by or against the Bandari College shall be carried on or prosecuted by or against the Authority and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Order.

(6) The administrative directions made by the Bandari College or by the Cabinet Secretary which were in force immediately before the coming into operation of the Order shall, on and after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Order.

(7) Any reference in any written law or in any document or instrument to the Bandari College shall on and after the commencement of this Order, be construed to be a reference to the Academy.

Dated the 16th November, 2018

UHURU KENYATTA,
President.

LEGAL NOTICE NO. 234

THE INCOME TAX ACT
(Cap. 470)

EXEMPTION

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Planning directs that the severance pay, salary in lieu of notice, payment of accumulated leave days, transport allowance and golden handshake to three hundred and fifteen employees of the Kerio Valley Development Authority who qualify to leave service under the Voluntary Early Retirement Programme shall be exempt from the provisions of the Act:

Provided that—
(a) this exemption shall not apply to employees who have
attained the age of sixty years or have less than one year
before they retire from service;

(b) this exemption shall not apply to any payment received from
the Provident Fund;

(c) any employee who shall retire under the Voluntary Early
Retirement Programme and benefit from this exemption shall
not be re-employed by the Kerio Valley Development
Authority in any capacity or under any terms whatsoever
before the expiry of five years from the date of retrenchment;

(d) the Kerio Valley Development Authority shall comply with
any condition imposed on it by the Commissioner of Income
Tax; and

(e) the Kerio Valley Development Authority shall provide the
Commissioner of Income Tax with the name of each
employee who retires under the Voluntary Early Retirement
Programme, the date that the retired, the total amount paid to
the employee and a copy of the letter from the employee
confirming the employee’s retirement.

Dated the 23rd November, 2018.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.