LEGAL NOTICE NO. 110

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 KENYA EXPORT PROMOTION AND BRANDING AGENCY ORDER, 2019

PART I—PRELIMINARY

1. This order may be cited as the Kenya Export Promotion and Branding Agency Order, 2019.

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

   “Agency” means the Kenya Export Promotion and Branding Agency established under paragraph 3;
   “Board” means the Board of Directors of the Agency established under paragraph 5; and
   “Cabinet Secretary” refers to the Cabinet Secretary for the time being responsible for matters relating to export promotion and branding.

PART II—KENYA EXPORT PROMOTION AND BRANDING AGENCY

3. (1) There is established an agency to be known as the Kenya Export Promotion and Branding Agency.

   (2) The Agency shall be a body corporate in accordance with section 3 of the Act.

   (3) The Agency shall be the successor to—

   (a) the Brand Kenya Board established by the Brand Kenya Board Order, 2008; and
   (b) the Export Promotion Council established on the 19th August, 1992 through Gazette Notice No. 4342 of 1992.

4. The functions of the Agency shall be—
(a) to advocate, coordinate, harmonise and implement export promotion and Nation branding initiatives and policies to promote Kenyan goods and services in export markets;

(b) to collect, collate, disseminate and serve as a repository of trade and Kenya brand information;

(c) to provide nation branding guidelines for stakeholders' initiatives including Kenya missions abroad;

(d) to advocate, promote and facilitate the development and diversification of Kenya's export trade;

(e) to promote and brand Kenyan exports through knowledge-based support and information to exporters and producers including export procedures and documentation, market entry requirements, and marketing techniques;

(f) to encourage and monitor the observance of international standards and specifications by exporters;

(g) to provide cooperation to the export inspection agencies on quality control and preshipment inspection of export products to ensure observance of international standards and specifications;

(h) to promote and brand Kenya as a supplier of high quality goods and services;

(i) to ensure the harmonised application of the national mark of identity for Kenyan goods and services;

(j) to formulate and implement strategies for improved balance of trade, foreign exchange earnings and retention;

(k) to offer advice to Kenyan exporters including in technology upgrading, quality and design improvement, standards and product development, and innovation;

(l) to provide export assistance services, such as distribution of trade-related information to exporters, foreign country market research, and counselling to exporters;

(m) to co-ordinate Kenya's participation in trade promotion events including trade fairs and buyer-seller meets;

(n) to provide market intelligence through research, analysis and monitoring of trends and opportunities in international markets that Kenyan exporters can take advantage of to increase or diversify exports;

(o) to provide Kenyans with positive information about Kenya in order to promote national unity, patriotism and national pride;
(p) to establish an integrated approach within Government and private sector towards international marketing and branding of Kenya;

(q) to build national support for the nation brand with other Government Agencies, non-governmental organizations and the private sector;

(r) to provide customised advisory services; and

(s) to do any other thing necessary or expedient for the discharge of its functions under this order.

(2) In the performance of its functions under paragraph (1), the Agency shall be guided—

(a) by market development, promotion and national branding;

(b) by trade information and business counselling services;

(c) by enterprise and product development; and

(d) by research and policy facilitation.

PART III—BOARD OF DIRECTORS OF THE AGENCY

5. (1) There is established a Board of Directors of the Agency which shall consist of—

(a) a non-executive Chairperson appointed by the President;

(b) the Principal Secretary in the Ministry for the time being responsible for matters relating to export promotion and branding;

(c) the Attorney-General or his representative;

(d) the Principal Secretary for the National Treasury;

(e) three persons from the private sector who shall be appointed by the Cabinet Secretary;

(f) the Chief Executive Officer who shall be an ex officio member without the right to vote at the meetings of the Board; and

(g) the Corporation Secretary who shall be an ex officio member without the right to vote at the meetings of the Board.

(2) The appointments under subparagraphs (1)(a) and (e) shall be by notice in the *Gazette*.

(3) The tenure of the members of the Board and the Chief Executive Officer shall each be for a period not exceeding three years which may be renewed only once for a period not exceeding three years.
6. The functions of the Board shall be to—

(a) provide strategic advice and direction to the Agency;

(b) approve policies that shall facilitate the development of the Agency;

(c) recruit and appoint the Chief Executive Officer on such terms and conditions as the Board shall determine with the advice of the Salaries and Remuneration Commission;

(d) receive, on behalf of the Agency, grants-in-aid, gifts, donations, fees, subscriptions or monies;

(e) administer the property and funds of the Agency in such a manner and for such purpose as shall promote the functions of the Agency; and

(f) perform such other functions as may be incidental to the foregoing.

7. A person shall be eligible to be appointed as the chairperson or a member of the Board if that person—

(a) holds a degree in a relevant field from a university recognized in Kenya;

(b) has proven business management or other relevant professional experience;

(c) has served in a senior management position for a period of at least six years;

(d) has not served in the Brand Kenya Board or the Export Promotion Council as an employee in the preceding five years;

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

(f) meets the requirements of fit and proper test.

8. (1) There shall be a Chief Executive Officer of the Agency who shall be competitively recruited and appointed by the Board on such terms as shall be determined by the Board on the advice of the Salaries and Remuneration Commission.

(2) A person shall be qualified to be appointed as the Chief Executive Officer if that person—

(a) holds a degree in a relevant field from a university recognized in Kenya;

(b) has at least ten years' knowledge and experience in trade or export promotion;
(c) meets the requirements of Chapter Six of the Constitution;
(d) has served in a senior management position for a period of at least five years; and
(e) meets the requirements of fit and proper test.

(3) The Chief Executive Officer shall be responsible for—

(a) the day to day operations of the Agency;
(b) supervision, management and discipline of the staff of the Agency;
(c) executing the policies of the Board in respect of the mandate of the Agency;
(d) reporting to the Board on the performance of the Agency; and
(e) performing any other functions as may be assigned to him or her by the Board from time to time.

9. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board on such terms as shall be determined by the Board on the advice of the Salaries and Remuneration Commission.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

(a) holds a degree in a relevant field from a university recognised in Kenya;
(b) is a certified public secretary and has been a member in good standing of the Institute of Certified Public Secretaries of Kenya for at least five years;
(c) has previously held the position of a corporation secretary for a period of at least five years;
(d) meets the requirements of Chapter Six of the Constitution; and
(e) meets the requirements of the fit and proper test.

(3) The Corporation Secretary shall be responsible for—

(a) providing guidance to the Board on the Board's duties, responsibilities and powers;
(b) ensuring that Board follows its procedures and complies with the respective laws and regulations;
(c) assisting the Chairperson to organise the Board's activities including meetings, agendas of meetings and issuing notices to other members of the Board;
(d) taking and keeping the minutes of the meetings of the Board, and circulating the minutes to the members of the Board;

(e) preparing the Board’s work plans, circulating Board papers before meetings, keeping a record of attendance at meetings, keeping in safe custody the seal of the Board and a record of the seal’s usage, and preparing the annual meetings of the Board;

(f) keeping a record of the appointment letters, Notices of appointment and the written acceptance of appointment by members of the Board; and

(g) keeping a record of conflicts of interest declared by each member of the Board.

10. (1) The Board may appoint such number of professional, technical and administrative staff for the Agency.

(2) Without prejudice to the generality of subparagraph (1), the Board shall, with the final approval by the Cabinet Secretary, recruit Commercial Attachés through a competitive process.

(3) Any person appointed under subparagraphs (1) and (2) shall serve on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

PART IV—FINANCIAL PROVISIONS

11. The funds of the Agency shall consist of—

(a) such monies as may be appropriated by Parliament for the purposes of the Agency;

(b) such monies or assets as may accrue to the Agency in the course of the performance of its functions; and

(c) any monies from any other source provided or donated to the Agency.

12. The financial year of the Agency shall be the period of twelve months ending on the 30th June in each year.

13. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of its revenue and expenditure for that year.

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

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

(b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Agency;
(c) the proper maintenance of the buildings and grounds of the Agency;

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

(e) the creation of 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 Agency may deem fit.

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

(4) No expenditure shall be incurred for the purposes of the Agency except in accordance with the annual estimates approved under this paragraph.

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

(2) The Agency may place on deposit with such bank or banks which are licensed to operate in Kenya by the Central Bank of Kenya any monies not immediately required for its purposes.

15. The Agency shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Board.

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

(2) Within a period of three months after the end of each financial year, the Agency shall submit to the Auditor-General or to an auditor appointed under subparagraph (1) the accounts of the Agency together with—

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

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

(2) The accounts of the Agency shall be audited in accordance with the provisions of the Public Audit Act, 2015.

(3) The appointment of an auditor under subparagraph (1) shall not be terminated by the Agency without the prior written consent of the Auditor-General.
(4) The Auditor-General may give general or special directions to an auditor appointed under subparagraph (1) and the auditor shall comply with those directions.

(5) An auditor appointed under subparagraph (1) shall report directly to the Auditor-General on any matter relating to the directions given by the Auditor-General.

(6) Within six months after the end of each financial year, the Auditor-General shall report on the examination and audit of the accounts to the Agency to the Cabinet Secretary and, in the case of an auditor appointed under subparagraph (1), the auditor shall transmit a copy of the report to the Auditor-General.

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

(8) The Cabinet Secretary shall lay the report prepared under subparagraph (6) before the National Assembly as soon as reasonably practicable after the report has been submitted to him or her.

PART V—GENERAL PROVISIONS

17. The Brand Kenya Board Order, 2008 is revoked.


19. Despite the provisions of paragraphs 17 and 18—

(a) any order, direction or appointment issued under the Brand Kenya Board Order, 2008 or made by the Export Promotion Council and every office created under the Brand Kenya Board Order shall remain valid until otherwise cancelled, revoked, varied or abolished;

(b) any person who immediately before the commencement date of this Order held or was acting or was an employee or staff in the office established by the Brand Kenya Board Order, 2008, or in the Export Promotion Council, so far as shall be consistent with this Order, shall continue to hold or act or work in that office;

(c) any contract, project, memorandum of understanding or any other binding instrument entered into by the Export Promotion Council or by Brand Kenya Board before the commencement of this Order shall continue to hold and be implemented by the Agency for the remainder of the instrument’s term or for a maximum period of eighteen months whichever is later; and
(d) the assets and liabilities of the Export Promotion Council and Brand Kenya Board that were acquired before the commencement of this Order shall be transferred to and vest in the Agency.

Dated the 5th July, 2019.

UHURU KENYATTA,
President.

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