



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE HIGHER EDUCATION LOANS BOARD ACT

CHAPTER 213

Revised Edition 2023 [1995]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 213

HIGHER EDUCATION LOANS BOARD ACT

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CHAPTER 213

HIGHER EDUCATION LOANS BOARD ACT

[Date of assent: 19th July, 1995.]

[Date of commencement: 21st July, 1995.]

An Act of Parliament to provide for the establishment of a Board for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya and for matters incidental thereto and connected therewith

[Act No. 3 of 1995, Act No. 6 of 2005, Act No. 32 of 2015, Act No. 19 of 2023.]

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the Higher Education Loans Board Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Board" means the Higher Education Loans Management Board established by section 3 of this Act;

"Commission for Higher Education" means the Commission established by section 3 of the Universities Act;

"eligible person" means any person, who being a Kenyan citizen, has attained minimum entry requirements and has been admitted to a recognized institution of higher education to a full time course of at least one year's duration;

"Fund" means the Higher Education Loans Fund established by section 11 of this Act;

"Higher education" means any course of education offered by an institution above the standard of Kenya Certificate of Secondary Education or any equivalent certificate approved by the Board;

"Loanee" means any person granted an education loan either under the Higher Education Loans Fund Act, 1952 (Repealed) or any person granted an education loan by the Ministry of Education from 1974 through the National Bank of Kenya or any person granted an education loan by the Ministry of Education through the National Bank of Kenya and the Kenya Commercial Bank from 1989 until commencement of this Act, or any person granted an education loan by the Board under this Act;

"Secretary" means the Secretary to the Board appointed under section 5 of this Act;

"student" means any Kenyan citizen admitted and pursuing higher education with financial assistance from the Board.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE BOARD

3. Establishment of the Board

(1) There is hereby established a Board to be known as the Higher Education Loans Management Board which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract
- (d) borrowing and lending money;
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

(3) *Spent*

4. Constitution of the Board

(1) The Board shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the Secretary to the Commission for Higher Education;
- (c) the Principal Secretary, Ministry of Education or his representative;
- (d) the Principal Secretary, Ministry of Finance or his representative;
- (e) the Chairperson of the Vice-Chancellors Committee for Public Universities;
- (f) a representative of Vice-Chancellors or Principals of the Private Universities;
- (g) the Executive Director of the Federation of Kenya Employers;
- (h) the Chairperson of the Kenya Bankers' Association;
- (i) two other persons appointed by the Cabinet Secretary; and
- (j) such other persons not being more than three, as the Board may co-opt from time to time.

(2) The members of the Board referred to in paragraph (e) to (h) shall be appointed by the Cabinet Secretary.

(3) The members of the Board other than *ex officio* members shall hold office for a period of five consecutive years and may be eligible for re-appointment.

(4) The office of a member of the Board shall fall vacant—

- (a) if not being an *ex officio* member, he submits his resignation in writing under his hand to the appointing authority through the Secretary;
- (b) if the Board is satisfied that such a member is by reason of his physical or mental infirmity unable to execute the functions of his office;
- (c) if he has been adjudged bankrupt by a competent court of law or has committed a criminal offence which directly or otherwise reflects adversely on his status as a member of the Board; or
- (d) upon his death.

(5) Where the office of a member becomes vacant under subsection (4), the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.

5. Secretary to the Board

(1) There shall be a Secretary to the Board who shall be appointed by the Cabinet Secretary and who shall be the chief executive of the Board, and shall be responsible for the management of the day-to-day activities of the Board.

(2) The Secretary shall hold office for six years and shall be eligible for re-appointment.

(3) The Secretary shall be the head of the Secretariat and shall be responsible to the Board in ensuring that the Secretariat satisfactorily carries out duties and performs functions assigned to it by the Board.

(4) The Secretary shall, be an *ex officio* member of the Board and shall have no right to vote at the meetings of the Board.

6. Functions of the Board

The functions of the Board shall be—

- (a) to formulate sound policies for regulating the management of the Fund;
- (b) to solicit for funds and other assistance to promote the functions of the Board;
- (c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans;
- (d) to receive any gifts, donations, grants or endowments made to the Board, and to make legitimate disbursements therefrom;
- (e) to establish and maintain links with other persons, bodies or organizations within or outside Kenya, as the Board may consider appropriate for the furtherance of the purposes for which the Board is established;
- (f) to enter into contracts with financial institutions for the purpose of loans disbursement and recovery;
- (g) to grant loans out of the Fund either with or without security, as the Board may deem fit, to any eligible person to enable him, or assist any student, to meet the cost of higher education;
- (h) to determine the maximum number of eligible persons or students to be granted loans in any one particular year;
- (i) to invest any surplus funds not currently required for the purpose of the Board in any investment authorized by law for the investment of trust funds with power from time to time to vary or realize those investments;
- (j) with the consent of the Cabinet Secretary, to set up and expend such other funds as may from time to time be required;
- (k) to receive and consider all loan applications from eligible persons or students wishing to be considered for the award of higher education loans, and to approve, withhold or reject such requests in accordance with the provisions of this Act;

- (l) to borrow such monies from such sources and in such amounts as may be approved by the Cabinet Secretary with the concurrence of the Treasury and to secure such loans in such manner as they deem fit;
- (m) to take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;
- (n) to establish and award bursaries and scholarships which it may consider necessary for the promotion of the objectives and functions of the Board.
- (o) to perform any other functions relating to the granting of students' loans in accordance with the provisions of this Act; and
- (p) to perform and exercise all other functions and powers conferred on the Board by this Act.

7. Committees of the Board

- (1) The Board shall appoint the following committees—
 - (a) the Loans Disbursement and Recovery Committee;
 - (b) the Finance, Staff and General Purpose Committee; and
 - (c) any other committee that the Board deems appropriate.
- (2) The membership of each Committee shall be five and the quorum shall be three members present
- (3) Each Committee shall elect its own Chairperson.
- (4) All Committees of the Board shall have powers to co-opt such members not exceeding two as necessary.
- (5) Subject to this Act, the Committees shall regulate their own proceedings.

8. Delegation of powers

- (1) The Board may delegate to any of its Committees such of its powers and duties as it may deem necessary.
- (2) Except with the written authority of the Board, no act of a Committee shall be binding on the Board until it has been approved by the Board.
- (3) Any person aggrieved by a decision of a Committee, may appeal to the Board within sixty days from the date of such decision and in every such appeal, the decision of the Board shall be final and not subject to a further appeal in any court.

9. Officers and agents of the Board

The Board may by a resolution either generally or in any particular case delegate to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board as authorized by this Act.

10. Meetings of the Board

- (1) The Chairperson shall preside at all the meetings of the Board unless he is absent from a particular meeting in which case the members present shall elect one of themselves to preside at that particular meeting or part thereof.
- (2) The Board shall meet at least four times in each year, but the Chairperson shall, upon requisition in writing by at least five members, convene a special meeting of the Board at any time.

(3) The quorum necessary for transaction of the business of the Board shall be five members:

Provided that the quorum at any requisitioned meeting shall be any number of the members of the Board entitled to attend such meeting and the meeting shall be free to adopt any procedure thereat suitable in the circumstances.

(4) All questions at any meeting of the Board shall be determined by a simple majority of the votes of the members present and voting.

(5) The Chairperson shall, in case of equality of votes, have an original and a casting vote.

(6) The Secretary shall cause minutes and proceedings of all the Board's meetings to be entered into the Minute-Book kept for that purpose.

(7) Subject to this Act, the Board shall regulate its own proceedings.

PART III – ESTABLISHMENT AND ADMINISTRATION OF THE FUND

11. Establishment of the Fund

(1) There is hereby established a Fund to be known as the Higher Education Loans Fund which shall be managed and administered by the Board.

(2) The object and the purpose of the Fund shall be to provide funds to be used for granting loans to assist Kenyan students to pursue higher education at such institutions within and outside Kenya, recognized by the Commission for Higher Education.

12. Revenue and Expenditure of the Fund

(1) There shall be credited to the Fund—

- (a) sums of money which may from time to time be voted by Parliament for that purpose;
- (b) sums which represent the repayment of the capital and interest of any loan granted by the Board or any other loan made prior to the enactment of this Act by the Ministry of Education;
- (c) income from any investment made by the Board;
- (d) any sums of money borrowed by the Board with the consent of the Cabinet Secretary;
- (e) any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Board and incurred in connection with the administration of the Fund.

13. Administration of the Fund

(1) Every student wishing to be considered for the grant of a higher education loan shall make an application to the Board in the prescribed form.

(2) Every student who has been awarded a higher education loan shall be issued with a Loanee Identification Personal Account Number by the Board (L.I.P.A.)

(3) Any students who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his request for a loan; or

- (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
- (c) is granted a loan based on false information,

shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a fine of not less than three thousand shillings or to imprisonment for a term of not less than six months and in the case of paragraph (c) to a fine of not less than thirty thousand shillings or to imprisonment for a term of not less than three years.

14. Conditions for grant of loan

(1) The Board may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to any student and in so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Board deems fit:

Provided that and subject to the provisions of this section the Board may upon the request by any student to whom a loan has been granted at any time vary-

- (i) the condition subject to which the loan was made;
- (ii) any security given in relation to the loan;
- (iii) any of the terms of repayment of the loan.

(2) Where the Board has resolved to make a loan to any eligible student, the Board shall notify the applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded.

(3) Where any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

(3A) The Board shall notify every applicant in writing whether the application for a higher education loan has been accepted or rejected.

(3B) A student may appeal against a decision of the Board to reject his or her application for grant of a higher education loan in writing, addressed to the Secretary of the Board.

(4) Where in granting a higher education loan to any student the Board considers it prudent to request for a guarantor to guarantee any loan granted to a student, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.

(5) Where a guarantor who has been notified by the Board under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

[Act No. 34 of 2015, s. 2.]

15. Obligations of the Loanees

(1) A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder, within one year of completion of his studies or within such a period as the Board decides to recall its loan whichever is the earlier—

- (a) to inform the Board of his contact address;
- (b) to begin repayment of his loan together with any interest accrued thereon;
- (c) if he is in formal employment, to authorize his employer to deduct the loan repayment and to remit it to the Board in such manner as the Board may direct.

(2) Any loanee who fails or neglects to satisfy the requirements of subsection (1) within the stipulated time shall, in addition to any other action that the Board may take against him, be guilty of an offence and liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of subsection (1) and such fine shall be payable to the Board.

16. Responsibilities of an employer

(1) Every employer shall be required, subject to and in accordance with this Act or any regulations made thereunder—

- (a) upon the employment of any loanee to inform the Board in writing within a period of three months of such employment;
- (b) upon confirmation by the Board that such a person so employed is a loanee, to deduct from the wages or remuneration of the loanee, the amount of any loan as instructed by the Board.

(2) The employer shall pay every deduction from the loanee's wages or remuneration in the prescribed manner to the Board within 15 days after the end of each month.

16A. Responsibility of Kenya Revenue Authority

Subject to section 125(3) of the Income Tax Act (Cap. 470), the Kenya Revenue Authority shall, at the request of the Board, furnish it with the name and address of a borrower or the employer of a borrower, if such information is known to the Authority.

[Act No. 6 of 2005, s. 42.]

17. Penalties for delayed remittance

(1) Where an employer fails to deduct or after deducting any loan repayment from a loanee does not pay such deductions to the Board within the prescribed period a sum equal to five percent of the total amount of the repayment shall be charged on the employer for each month or part of the month that the repayment remains unpaid.

(2) Where an employer fails, without reasonable excuse, to notify the Board that he has in his employment a loanee within the specified period that employer shall be guilty of an offence and liable to a fine of not less than three thousand shillings for each month or part of the month that he fails to notify the Board of such employment.

18. Annual returns

On the last day of each calendar year the Board returns, shall send to all loanees an annual return form which every loanee shall be required to fill and submit to the Board before the end of the month of February of the succeeding year.

19. Loan deductions

In making its deduction for loan recovery, the Board shall not deduct more than one quarter of the loanee's basic monthly salary.

20. General provisions

(1) if in the opinion of the Board there has been or is likely to be any breach of or failure to comply with any condition or term of repayment respecting a loan the Board may forthwith—

- (a) recover from the person from whom the loan was made or his personal representative as a civil debt under the Debts (Summary Recovery) Act (Cap. 42) the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;
- (b) enforce or realize any security relating thereto.

(2) The Board may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

21. Board's discretion to waive loans

Notwithstanding the provisions of this Act, in any case where the Board is of the opinion that a loanee should be exempt from repaying his loan by reason of—

- (a) death;
- (b) considerations of hardship or equity;
- (c) impossibility or undue difficulty, or the expenses to be incurred in the recovery of the loan being far in excess of the amount sought to be recovered;

thereupon the liability of the loan shall be extinguished or deemed to be abandoned under the provision of this Act and the provisions of this Act, other than this section, shall no longer apply to any such loan.

PART IV – OFFICERS OF THE BOARD**22. Officers of the Board**

The Board shall employ such officers, inspectors and servants as shall be necessary for the performance of their functions under this Act and shall pay out of the Fund to such officers and servants such salaries and allowances as the Board may from time to time determine.

23. Inspectors of the Board

(1) Every inspector appointed under section 22 shall Inspectorsofthe for the purposes of ascertaining whether the provisions of this Act have been complied with within any premises or place liable to inspection under this section have power to enter such premises or place at all reasonable times and to examine every person whom he finds therein.

(2) The occupier of any premises or place liable to inspection under this section and any person who is or has been employing any loanee, and the servants and agents of such occupier or other person, and any employer shall furnish to the inspector all such information and produce for inspection all such documents as the inspector may reasonably require for the purposes of ascertaining whether loan repayments are or have been made or have been duly paid by or in respect of any loanee employed in such premises.

(3) Any person who—

- (a) wilfully delays or obstructs any inspector in the exercise of any power under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section;

shall be guilty of an offence:

Provided that no person shall be required under this section to answer any question or to give any information which tends to incriminate him.

(4) Every inspector shall, upon seeking admission to any premises for the purposes of inspection, produce his letter of authorization issued by the Board.

24. Powers of inspector to prosecute.

An inspector appointed under section 22 or any other person authorized by the Board in writing, may, subject to the general or special directions of the Director of Public Prosecutions, prosecute in any court for all offences under this Act and for that purpose have all the powers conferred on a public prosecutor by the Criminal Procedure Code.

[Act No. 19 of 2023, Sch.]

PART V – LEGAL PROCEEDINGS

25. General provisions as to offences

Proceedings for an offence under this Act may, notwithstanding anything in any law to the contrary, be commenced at any time within the period of twelve months from the date on which evidence sufficient in the opinion of the Board to justify a prosecution for the offence comes to the knowledge of the Board.

26. Court order on repayments

(1) The court before whom any person is convicted of an offence under this Act, shall without prejudice to any civil remedy, order such person to pay to the Board, as the case may be, the amount of any outstanding loan repayments and interest or any other sum, together with any penalty thereon, found to be due from such person to the Board, and any sum so ordered shall be recoverable as a fine and paid to the Board.

(2) All sums due to the Board shall be recoverable as debts due to the Board and without prejudice to any other remedy may be recovered by the Board summarily as a civil debt.

(3) All criminal and civil proceedings under this Act may, without prejudice to any other in that behalf, be instituted by any inspector or other officer of the Board and where the proceedings are instituted or brought in a magistrate's court, any such inspector or other officer shall prosecute or conduct the proceedings.

(4) All sums recovered by legal proceedings in respect of sums which should have been but were not paid to the Board shall be so paid to the Board.

27. Evidence

In any proceedings under this Act, a copy of any entry in the accounts of or any extract from the records or register of the Board shall, if stated to be a true copy by a certificate purporting to be signed by the Secretary or a person authorized on his behalf by him, be received in evidence as *prima facie* evidence of the truth of the contents thereof.

PART VI – FINANCIAL PROVISIONS

28. Financial Year of the Board

The financial year of the Board shall be the period of twelve months commencing on the 1st of July and ending on the 30th day of June of the following year.

29. Annual Estimates

(1) The Board shall submit to the Cabinet Secretary an estimate of its income and expenditure during the succeeding financial year six months before the commencement of the financial year.

(2) The Cabinet Secretary shall communicate to the Board his approval of the annual estimates at least one calendar month before the commencement of the financial year.

(3) The annual estimates shall make provisions for all the estimates of expenditure of the Board for the financial year and shall provide for—

- (a) the cost of administration of the Board including payment of salaries, allowances, pensions, gratuities and other charges whatsoever payable to the staff and members of the Board;
- (b) the payment or reimbursement to the members of the Board of monies in respect of expenses incurred during the attendance of the meetings of the Board;
- (c) the development and maintenance of any property vested in the Board.

(4) Except with the approval of the Cabinet Secretary, no expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (2).

30. Books of accounts and audits

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

(2) The Board shall, not more than four months or such longer period as the National Assembly may by resolution appoint after the end of each financial year, cause to be prepared and submitted to the Auditor-General—

- (a) a balance sheet showing in detail the assets and liabilities of the Board at the end of the financial year;
- (b) a statement of financial activities, income and expenditure during the financial year; and
- (c) other statements of accounts as may be necessary to fully disclose the undertaking, assets, liabilities and discharge of the functions of the Board.

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

(4) The employment of an auditor shall not be terminated by the Board without the approval of the Auditor-General.

(5) The Auditor-General may give any general or special directions to an auditor appointed under subsection (3) and such auditor shall comply with those directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (5).

(7) Within a period of four months after the end of each financial year, the auditor shall report on the examination and audit of the accounts of the Board to the Cabinet Secretary where the auditor has been appointed under subsection (3). He shall also transmit a copy of the report and accounts to the Auditor-General.

(8) Nothing in this Act shall be construed as prohibiting the Auditor-General from carrying out the inspection of the Board's accounts or records if it appears to him desirable.

(9) Notwithstanding anything in this Act, the Auditor-General may transmit to the Cabinet Secretary a special report on any matter incidental to his powers under this Act, and the Public Audit Act (Cap. 412B), shall *mutatis mutandis* apply to any report made under this section.

(10) In the exercise of his powers and duties under this Act, the Auditor-General and any auditor appointed under this section shall have the same powers as those conferred the Auditor-General by Article 229 of the Constitution and section 7 of the Public Audit Act (Cap. 412B).

(11) The Cabinet Secretary shall lay the auditor's report submitted to him under subsection (7) before the National Assembly as soon as practicable, in accordance with provisions of section 31 (5) of the Exchequer and Audit Act, and if he fails or neglects to comply, the provisions of subsection (6) of that section shall apply.

(12) The fee for any auditor shall be fixed and paid by the Board.

31. Annual report of the Board

The Board shall, within three months after the end of each financial year, prepare a report on the operation of the Fund during that financial year and shall transmit such report to the Cabinet Secretary who shall cause it to be presented to the National Assembly together with the report of the Auditor-General and certified copies of the accounts referred to in section 30.

PART VII – MISCELLANEOUS PROVISIONS

32. Secrecy, offences and penalties

(1) Any person having an official duty or being employed in, or in connection with the administration of this Act shall regard and deal with all documents, information, returns and forms relating to applications for loans or to the granting of loans under this Act as secret and confidential.

(2) Any person having possession of, or control over, or access to, any documents, information, returns or forms relating to a matter referred to in subsection (1) who communicates anything contained therein—

(a) to any person other than a person to whom he is authorized by the Board to communicate it; or

(b) otherwise than for the purposes of this Act,

shall be guilty of an offence.

(3) Any person guilty of an offence under this Act shall, where no other penalty is prescribed, be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years.

33. Protection from personal liability

No matter or thing done by the Chairperson or any member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render the Chairperson, member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

34. Liability of the Board for damages

The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interest caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially of the exercise of such powers.

35. Powers of Cabinet Secretary to exempt

The Cabinet Secretary may by notice in the *Gazette* exempt any class of persons from all or any of the provisions of this Act, where in his opinion it is expedient in the public interest to do so.

36. Act to apply to Government employees

(1) This Act shall, subject to the provisions thereof relating to exempt persons, apply to persons in the service of the Government as it would apply if their employer were a private person or a state corporation.

(2) All monies required to be paid under this Act by the Government in respect of loan repayments in relation to persons in the service of the Government shall be charged on and paid out of the Consolidated Fund without any further appropriations than in this Act.

37. Regulations

The Cabinet Secretary may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, the Cabinet Secretary may make regulations in respect of the following—

- (a) the receipt, processing and approval of applications for loans and the granting of loans to students;
- (b) the preparation and maintenance of loanees' records;
- (c) the withdrawal, recovery and cancellation of loans already granted;
- (d) the waiver or exemption from repayment of loans;
- (e) persons who being loanees are or have been living outside Kenya;
- (f) the terms and conditions of service for the Board's staff;
- (g) the setting-up of procedures for dealing with loan defaulters; and
- (h) the grant of bursaries and scholarships.

38.

[Spent]

PART VIII – TRANSITIONAL PROVISIONS**39.**

[Spent]

40.

[Spent]
