

THE KENYA REVENUE AUTHORITY ACT, 1995

No. 2 of 1995

Date of Assent: 31st May, 1995

Date of Commencement: By Notice

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SCHEDULES

An Act of Parliament to establish the Kenya Revenue Authority as a central body for the assessment and collection of revenue, for the administration and enforcement of the laws relating to revenue and to provide for connected purposes

ENACTED by the Parliament of Kenya as follows:—

Short title and
Commencement.

1. This Act may be cited as the Kenya Revenue Authority Act, 1995 and shall come into force on a date to be appointed by the Minister by a notice in the Gazette.

Interpretation.

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

“Authority” means the Kenya Revenue Authority established by section 3;

“Board” means the Board of Directors established by section 6;

“Chairman” means the Chairman of the Board;

“financial year” means the period from 1st July of any year to 30th June of the following year;

“functional head” means the head of internal audit, the head of investigation, the head of research and training or such other head appointed under section 13;

“member” means a member of the Board of Directors and includes the Chairman;

“Minister” means the Minister for the time being responsible for finance;

“revenue” means taxes, duties, fees, levies, charges, penalties, fines or other monies collected or imposed under the written laws or the specified provisions of the written laws set out in the First Schedule.

PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY

Establishment
of Authority.

3. (1) There is established an Authority to be known as the Kenya Revenue Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and, subject to this Act, may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.

(3) The Authority shall be an agency of the Government for the collection and receipt of all revenues and shall be under general supervision of the Minister.

4. (1) The seal of the Authority shall be authenticated by the signature of the Commissioner-General and the Secretary to the Board.

Seal of the
Authority.

(2) In the absence of the Commissioner-General a Commissioner designated by him for the purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being performing the functions of the Secretary may authenticate the seal in his place.

(3) Every document purporting to be an instrument issued by the Authority and to be sealed with the seal of the Authority authenticated in the manner provided by subsection (1) or (2) shall be deemed to be such an instrument and shall be received in evidence without further proof.

5. (1) The functions of the Authority are—

Functions of
the Authority.

- (a) to administer and enforce the written laws or the specified provisions of the written laws set out in the First Schedule and for that purpose assess, collect and account for all revenues in accordance with those laws;
- (b) to advise on matters relating to the administration of, and the collection of revenue under the written laws or the specified provisions of the written laws set out in the First Schedule; and
- (c) to perform such other functions in relation to revenue as the Minister may direct.

(2) The Minister may, by notice in the Gazette, amend the First Schedule.

PART III—ESTABLISHMENT AND FUNCTIONS OF THE BOARD
OF DIRECTORS

Board of
Directors.

6. (1) There is established a Board of Directors which shall be the governing body of the Authority.

(2) The Board shall consist of the following—

- (a) a Chairman appointed by the President;
 - (b) the Commissioner-General;
 - (c) the Permanent Secretary, Ministry of Finance or the Director of Fiscal and Monetary Affairs, Ministry of Finance as his representative;
 - (d) the Permanent Secretary, Ministry of Commerce and Industry;
 - (e) the Financial Secretary, Ministry of Finance;
 - (f) the Attorney-General or his representative;
 - (g) the Governor of the Central Bank of Kenya; and
 - (h) four other persons with knowledge and practical experience in accountancy, commerce, law or taxation appointed by the Minister.
- (3) The Board shall be responsible for—
- (a) the approval and review of the policy of the Authority;
 - (b) the monitoring of the performance of the Authority in carrying out its functions; and
 - (c) the discipline and control of all members of staff of the Authority appointed under this Act.

Tenure of office
of Chairman and
Members.

7. (1) A member of the Board, other than an *ex-officio* member—

- (a) shall hold office on such terms and conditions including remuneration as are specified in his instrument of appointment, and for a period not exceeding three years; and
- (b) shall be eligible for reappointment for one further term of three years.

(2) A member of the Board, other than an *ex-officio* member, may resign his office by written notification under his hand addressed to the Minister.

8. The appointment of a member may be terminated, in the case of the Chairman by the President, and in the case of any other member by the Minister, on any of the following grounds—

Termination of appointment of Chairman and members.

- (a) for his inability to perform the functions of his office by reason of mental or physical infirmity;
- (b) if he is declared or becomes bankrupt or insolvent;
- (c) if he is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) if, without reasonable cause to the satisfaction of the Minister, he is absent from six meetings of the Board in any financial year;
- (e) if in any particular case, he fails to comply with the provisions of section 9;
- (f) for any other sufficient cause.

9. (1) A member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as possible after the relevant facts concerning the matter have come to his knowledge disclose the nature of his interest to the Board.

Disclosure of interests by Chairman and members.

(2) A disclosure of interest made by a member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not unless the Board otherwise determines in respect of that matter—

- (a) be present during any deliberations on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(3) For the purpose of the Board making a determination under subsection (2) in relation to a member who has made a disclosure under subsection (1), such member shall not—

- (a) be present during the deliberations of the Board nor take part in the making of such determination by the Board; or
- (b) influence any other member to take part in the making of such determination by the Board.

Meetings of
the Board.

10. (1) The provisions of the Second Schedule shall apply to the meetings of the Board and other matters provided for in that Schedule.

(2) The Board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote.

(3) The Minister may, by notice in the Gazette, amend the Second Schedule.

PART IV—COMMISSIONER-GENERAL, OFFICERS AND STAFF

Commissioner-
General.

11. (1) There shall be a Commissioner-General of the Authority who shall be appointed by the Minister upon the recommendation of the Board on such terms and conditions as are specified in his instrument of appointment.

(2) The Commissioner-General shall be the chief executive of the Authority and, subject to the general supervision and control of the Board, shall be responsible—

- (a) for the day-to-day operations of the Authority;
- (b) for the management of funds, property and affairs of the Authority; and
- (c) for the administration, organization and control of the staff of the Authority.

(3) The Minister may, after consultation with the Board, terminate the appointment of the Commissioner-General for—

- (a) misbehaviour in terms of the code of conduct and discipline prescribed under section 21;
- (b) the Commissioner-General's inability to perform the functions of his office by reason of mental or physical infirmity; or
- (c) any other sufficient cause.

Secretary to
the Board.

12. (1) There shall be a Secretary to the Board who shall be appointed by the Board.

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

13. (1) The Board shall appoint to the service of the Authority the following other officers—

Appointment of commissioners and other officers.

- (a) the Commissioner of Customs and Excise;
- (b) the Commissioner of Income Tax;
- (c) the Commissioner of Value Added Tax; and
- (d) such other Commissioner as may be deemed necessary.

(2) The Commissioner-General shall, subject to the approval of the Board, appoint the head of internal audit, the head of investigation, the head of research and training and other functional heads required by the Authority for the efficient performance of its functions.

(3) The Commissioner-General shall appoint all other members of staff as may be required by the Authority for efficient performance of its functions.

(4) The terms and conditions of all persons employed by the Authority shall be determined by the Board.

(5) Except as may otherwise be determined by the Board in any particular case, an officer referred to in subsection (1), or in his absence the immediate deputy, shall be entitled to attend and participate in the deliberations of any meeting of the Board but shall have no right to vote.

14. Any person employed by the Authority shall be personally liable for any act or omission done or committed in the performance of his functions under this Act, if having regard to the circumstances of the case such act or omission—

Employees to be personally liable for wrongful acts or omissions.

- (a) is done or committed wilfully or dishonestly by such person;
- (b) is attributable to the negligence of such person; or
- (c) is done or committed by such person in contravention of any provision of this Act or regulations made thereunder or any other written law.

PART V—FINANCIAL PROVISIONS

15. All revenues collected by, or due and payable to, the Authority under this Act shall be paid into the Consolidated Fund.

Revenue to be paid into Consolidated Fund.

16. (1) The funds of the Authority shall consist of—

Funds of the Authority.

- (a) one and one-half per cent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act;

- (b) three per cent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected in respect of that period:

Provided that the total amount payable under this paragraph and paragraph (a) shall not exceed two per cent of the actual amount collected in respect of that period;

- (c) loans and grants received by the Authority with the approval of the Minister; and
 (d) any other monies as may, with the approval of the Minister, be received by or made available to the Authority for the purpose of performing its functions.

(2) The funds of the Authority—

- (a) specified in subsection (1) (a) shall be payable to the Authority in equal monthly instalment on or before the beginning of each month;
 (b) specified in subsection (1) (b) shall be payable to the Authority within one month after the end of the three month period.

(3) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year approved by the Board.

Estimates of
income and
expenditure of
the Authority.

17. (1) The Commissioner-General shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, estimates of the income and expenditure of the Authority for the next ensuing financial year and may at any time before the end of each financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates for that financial year.

(2) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board according to the estimates for the financial year in which the expenditure is to be incurred or in the supplementary estimates for that year.

18. (1) The Authority shall keep accounts and records of its transactions and affairs and shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its property and liabilities the Authority may incur under this Act.

Accounts, audit and annual reports.

(2) The annual accounts of the Authority shall be audited by the Controller and Auditor-General.

(3) The Commissioner-General shall, within three months after the end of each financial year submit—

(a) to the Minister and the Board an annual report in respect of that year, containing—

- (i) financial statements of the Authority;
- (ii) the Authority's performance indicators and any other related information;
- (iii) a report on the operations of the Authority; and
- (iv) such other information as the Board may deem fit; and

(b) to the Controller and Auditor-General, the accounts of the Authority for the financial year; and the annual report referred to in paragraph (a).

(4) The Controller and Auditor-General shall audit the accounts of the Authority within two months after he has received them and submit his report thereon to the Minister and to the Board.

(5) The Minister shall cause copies of the annual report together with copies of the Controller and Auditor-General's report to be laid before the National Assembly within two months or at the next sitting of the National Assembly after he has received them, whichever is the earlier.

19. (1) In addition to any other functions assigned to him by the Board or the Commissioner-General, the head of internal audit shall be responsible for the internal audit of the Authority's accounts and shall submit to the Commissioner-General a report on the accounts in respect of every three months of a financial year.

Internal audit and quarterly audit reports.

(2) The Commissioner-General shall submit every report referred to in subsection (1) to the Board for its consideration at the next meeting of the Board after he has received the report and shall also submit copies of the report to the Minister and the Controller and Auditor-General.

PART VI—MISCELLANEOUS PROVISIONS

Exemption.
Cap. 446.

20. The Authority shall be exempted from the State Corporations Act.

Regulations.

21. The Board may make regulations for the carrying into effect the provisions of this Act, and in particular but without prejudice to the foregoing make regulations—

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) prescribing the code of conduct and discipline;
- (d) respecting the administration and management of the funds of the Authority;
- (e) respecting the performance targets of the Authority.

Vesting of assets
and liabilities,
subsisting
contracts,
pending
proceedings.

22. (1) All property, except any such property as the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Departments of Customs and Excise, Income Tax and Value Added Tax for purposes of the written laws set out in the First Schedule, shall on the commencement of this Act, and without further assurance, vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Departments of Customs and Excise, Income Tax and Value Added Tax before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written laws set out in the First Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had not been enacted.

(4) Unless the Board otherwise determines, all persons being public officers, who before the commencement of this Act are employed by the Government for the purposes of the written laws specified in the First Schedule shall, on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

23. (1) On and after the coming into force of this Act—

- (a) all references to the Commissioner of Customs and Excise, Commissioner of Income Tax or the Commissioner of Value Added Tax in any written law specified in the First Schedule or any other law shall be construed as references to the Commissioner-General of the Authority;
- (b) any reference to Customs and Excise Department, Income Tax Department or Value Added Tax Department in the written laws specified in the First Schedule or in any other law shall be deemed to be reference to the Authority;
- (c) except as provided in paragraph (a) any reference to an officer of the Customs and Excise Department, Income Tax Department or Value Added Tax Department howsoever designated in the written laws specified in the First Schedule or in any other law shall be deemed to be reference to such officer of the Authority.

Construction and modification of other written laws

FIRST SCHEDULE (s. 2 and s. 5)

WRITTEN LAWS RELATING TO REVENUE

1. The Income Tax Act (Cap. 470).
2. The Customs and Excise Act (Cap. 472).
3. The Value Added Tax Act (Cap. 476).
4. Road Maintenance Levy Fund Act 1993 (No. 9 of 1993).
5. Air Passenger Service Charge Act (Cap. 475).
6. Entertainments Tax Act (Cap. 479).
7. Traffic Act (Cap. 403).
8. Transport Licensing Act (Cap. 404).
9. Second-Hand Motor Vehicles Purchase Tax Act (Cap. 484).

SECOND SCHEDULE

(s. 10)

Meetings of
the Board.

1. (1) The first meeting of the Board shall be convened by the Chairman and, subsequently, the Board shall meet as often as necessary for the transaction of business at such places and at such times as may be decided upon by the Board but it shall meet at least once every month.

(2) The Chairman shall preside at every meeting of the Board and in his absence the members present may appoint a member from among themselves to preside at that meeting.

(3) The Chairman or, in his absence a member appointed by the Board to act in his place, may at any time call a special meeting upon a written request by a majority of the members.

(4) Notice of every meeting of the Board shall be given in writing to each member at least five days before the day of the meeting.

Quorum.

2. (1) Subject to subparagraph (2), seven members shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at, or for the continuation of, a meeting of the Board only because of the exclusion of a member under section 9 of the Act from the deliberations on a matter in which he has disclosed a personal interest, the other members present may if they deem it expedient so to do—

(a) postpone the consideration of that matter until there is a quorum without that member; or

(b) proceed to consider and decide the matter as if there was a quorum.

Decisions of
the Board.

3. (1) All questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(2) A decision may be made by the Board without a meeting by circulation of the relevant papers among the members of the Board and by the expression of the views of the majority of the members in writing but any member shall be entitled to require that the decision be deferred and the matter on which a decision is sought be considered at a meeting of the Board.

Minutes of
proceedings.

4 (1) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the chairman or the person presiding at the meeting.

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(2) The Chairman of the Board shall submit to the Minister a copy of the minutes of each meeting of the Board as soon as the minutes have been confirmed.

5. Subject to the provisions of the Act, the Board may regulate its own procedure.

**Board to
regulate its
procedure.**