

LEGAL NOTICE NO. 183

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 INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY ORDER, 2013**

PART I—PRELIMINARY

1. This Order may be cited as the Information and Communications Technology Authority Order, 2013. Citation.

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

“Authority” means the Information and Communications Technology Authority established by paragraph 3;

“assets” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former bodies whether situated in Kenya or elsewhere;

“Board” means the Board of the Authority established by paragraph 6;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to Information, Communications and Technology;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under paragraph 11;

“former bodies” means-

- (a) the Kenya ICT Board established under the Kenya ICT Board Order, 2007 under Legal Notice number 26 of 2007;
- (b) the E-Government Directorate established under Presidential Circular Number 1 of 2004; and
- (c) the Government Information Technology Services established under Treasury Circular Number 9 of 2003;

“GITS” means the Government Information Technology Services;

“ICT” means Information and Communications Technologies;

“ICT Infrastructure and systems” means information and communication technologies employed in collecting, storing, using or sending out information and include those involving the use of computers or any telecommunication system;

“computer system” means a device or collection of devices including input and output devices but excluding calculators which are not programmable and capable of being used in conjunction with external files which contain computer programmes, electronic instructions and data that perform logic, arithmetic, data storage, data retrieval, communication control and other functions;

“data” means information recorded in a format in which it can be processed by equipment operating automatically in response to instructions given for that purpose, and includes representations of facts, information and concepts held in any removable storage medium;

“e-Government services” means public services provided electronically by a Ministry or Government department, local authority, or any body established by or under any law or controlled or funded by the Government;

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

“electronic form” with reference to information, means any information generated, sent, received or stored in magnetic, optical, computer memory, microfilm or similar device

“electronic record” means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium;

“equipment” includes any appliance, apparatus or accessory used or intended to be used for communication services;

“innovation” includes-

- (a) a technovation model, utility model or industrial design within the meaning of the Industrial Property Act, 2001;
- (b) a product, process, service or idea which is novel;
- (c) an improved use of a new product, service or method in industry, business or society;

- (d) indigenous or traditional knowledge by community of beneficial properties of land, natural resources, including plant and animal resources and the environment; or
- (e) any other non-patentable creations or improvements which may be deemed as deserving promotion and protection or sui generis intellectual property rights and "innovator" shall be construed accordingly;

"liabilities" means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

"telecommunication system" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—

- (a) speech, music and other sounds;
- (b) visual images;
- (c) data;
- (d) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or
- (e) signals serving for the activation or control of machinery or apparatus and includes any cable for the distribution of anything falling within paragraphs (a) to (d);

No.3 of 2001.

"transition period" means the period commencing on the date of publication in the gazette and ending ninety days thereafter;

"rights" means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

"vesting day" means the day specified by the Cabinet Secretary for the National Treasury and the Cabinet Secretary for the time being responsible for matters relating to Interior and Co-ordination of National Government under this Order or thirty days from the date of this Order, whichever occurs earlier; and

"Vesting Schedule" means the Schedule of assets and liabilities identified for vesting from the former bodies to the Authority by the Cabinet Secretary for the National Treasury and the Cabinet Secretary for Interior and Co-ordination of National Government.

PART II—ESTABLISHMENT OF THE AUTHORITY

Establishment and
functions of the
Authority.

3. (1) There is hereby established a state corporation to be known as the Information and Communications Technology Authority.

(2) The Authority shall be a body corporate in accordance with section 3 of the Act and shall be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) receiving, investing, borrowing and lending money; and
- (d) doing or performing any such other things or acts, including entering into such contracts as may be necessary or expedient, for the furtherance of the provisions of this Order which may be done by a body corporate.

(3) The Authority shall be the successor to the following bodies existing before the commencement of this Order-

- (a) the Kenya Information and Communications Technology (ICT) Board;
- (b) the Directorate of e-Government; and
- (c) the Government Information Technology Services (GITS) Department.

(4) The headquarters of the Authority shall be in Nairobi.

Functions of the
Authority

4. The functions of the Authority shall be to—

- (a) set and enforce ICT standards & guidelines for human resource, infrastructure, processes, systems and technology for the public office and public service and;
- (b) deploy and manage all ICT staff in the public service;
- (c) facilitate and regulate the design, implementation and use of ICTs in the public service;
- (d) promote ICT literacy and capacity;
- (e) promote e-Government services;
- (f) facilitate optimal electronic, electronic form, electronic record and equipment use in the public service;

- (g) promote ICT innovation and enterprise;
- (h) facilitate the establishment, development and maintenance of secure ICT Infrastructure and systems; and
- (i) supervise the design, development and implementation of critical ICT Projects across the public service.

5.(1) In carrying out its functions, the Authority shall be guided by the following principles in addition to national values and principles of governance specified under Article 10 of the Constitution-

Guiding
principles of the
Authority

- (a) efficiency;
- (b) effectiveness;
- (c) value for money; and
- (d) environmental protection.

(2) In carrying out its functions, the Authority shall promote the following among others—

- (a) strategic progress in the development and use of ICTs;
- (b) universal access to services through ICTs;
- (c) universal good quality broadband.

PART III—ESTABLISHMENT OF THE BOARD

6. (1) There shall be a Board of the Authority which shall have responsibility of managing the Authority in accordance with this Order.

Establishment, of
the Board

(2) The Board shall consist of the following members—

- (a) a non-executive Chairman appointed by the President;
- (b) the Principal Secretary responsible for matters relating to Information Communications and Technology;
- (c) the Principal Secretary responsible for matters relating to the National Treasury;
- (d) the Principal Secretary responsible for matters relating to Land, Housing and Urban Development;
- (e) not more than six persons, not being public officers, appointed by the Cabinet Secretary, by virtue of their specialist knowledge and distinguished service and

experience of at least seven years in matters relating to information and communications technologies, e-Government, e-Commerce, law, finance or human resources management; and

(f) the Chief Executive Officer,

(2) A member of the Board shall, subject to such conditions as may be specified in his instrument of appointment, hold office for a term not exceeding three years and shall be eligible for reappointment for one further term.

(3) Members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The Board may from time to time co-opt into its membership persons to assist it in any particular matter for the time being before the Board, but such co-opted member shall not be entitled to vote on the matter.

Remuneration and allowances.

7. The members of the Board shall be paid such remuneration, allowances and reimbursement of costs as the Board may, with the approval of the Cabinet Secretary in consultation with the National Treasury and Salaries and Remuneration Commission, determine.

Appointment of committees.

8. The Board, may, for the better performance of its functions appoint and assign duties to such Committees, as it may consider appropriate.

Board meetings.

9. The Board shall meet not less than four times during each financial year.

Quorum of the Board.

10. The quorum of a meeting of the Board shall be one half plus one of all members.

Chief Executive Officer.

11. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Cabinet Secretary

(2) The Cabinet Secretary shall appoint the first Chief Executive Officer of the Authority upon commencement of this Order for a term of not more than three years but subsequent appointments shall be made by the Cabinet Secretary on the recommendation of the Board after a competitive recruitment process on such terms and conditions as shall be determined.

(3) The Chief Executive Officer shall hold office for a term not exceeding three years and shall be eligible for reappointment for a further one term.

(4) A person shall not be appointed as the Chief Executive Officer unless the person possesses a degree from a recognized

institution and has a least seven years working experience in a senior position in matters relating to information communications technology, law or finance and satisfies the requirements of Chapter six of the Constitution

(5) The Chief Executive Officer shall—

- (a) have overall responsibility for the direction, organization and administration of programmes and other affairs of the Authority;
- (b) be responsible for the supervision and discipline of the staff of the Authority;
- (c) subject to the directions of the Board on matters of policy, be responsible to Board for the administration and management of the Authority;
- (d) be the accounting officer of the Authority .

12. (1) Subject to this Order, the Board shall have powers to—

Powers of the Board.

- (a) administer the property and funds of the Authority in a manner and for the purposes which shall promote the interest of the Authority; but the Board shall not charge or dispose of immovable property of the Authority except in accordance with the procedures laid down by the Government of Kenya;
- (b) receive, on behalf of the Authority, donations, endowments, gifts, grants or other moneys and make disbursements there from to the Authority or other bodies or persons;
- (c) approve the appointment criteria and the terms and conditions of service of staff;
- (d) provide for the welfare of the staff of the Authority;
- (e) on behalf of the Authority enter into association with other Agencies, institutions or bodies, whether within Kenya or otherwise, as the Board may deem necessary and appropriate; and
- (f) make regulations governing the conduct and discipline of the staff of the Authority;
- (g) ensure that a proper management structure is in place and make sure that the structure functions to maintain corporate integrity, reputation and responsibility;
- (h) monitor and evaluate the implementation of strategies, policies, and management criteria and plans of the Authority;

- (i) regularly review the viability and financial sustainability of the Authority ,
- (j) ensure that the Authority complies with all the relevant laws, regulations, governance practices, accounting procedures and auditing standards;
- (k) consider and approve the Authority's budget;
- (l) undertake any other activities as may be necessary for the performance of its functions and the attainment of the purposes of the Authority.

Seal and
Execution of
Documents.

13. (1) The common seal of the Authority shall be kept in the custody of the Authority and shall not be affixed to any instrument or document except as may be generally or specifically authorised by the Board.

(2) The common seal of the Authority shall be authenticated by the signature of the Chief Executive Officer and the Chairperson or of one other member of the Board authorized by the Board on their behalf.

(3) All documents, other than those required by law to be under seal and all decisions of the Board, may be authenticated by the signature of the Chairperson or, in the case of a decision taken at a meeting at which the Chairperson was not present, by the signature of the person presiding at such meeting

Staff.

14. (1) The staff of the Authority shall consist of—

- (a) such professional, technical and administrative officers and support staff, as may be appointed by the Authority in the discharge of its functions under this Act; and
- (b) such public officers as may be seconded by the Public Service Commission to the Authority upon the request of the Authority.

(2) In addition to the staff appointed by the Authority, the national and county governments may, upon request by the Authority, second to the Authority such number of public officers as may be necessary for the due performance of the functions of the Authority.

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

(4) The Board may, subject to such restrictions as it may impose, delegate, either generally or specially, to any person, committee, or body, the power to appoint any member of the staff of the Authority.

(5) All members of staff of the Authority shall be subject to the

general authority of the Board and the Chief Executive Officer.

15. (1) In the event of the incapacity of the Chief Executive Officer, the chairman of the Board may appoint an officer of the Authority to carry out the functions of the Chief Executive Officer during the period of incapacity.

Delegation of duties of the Chief Executive Officer.

(2) In this section "incapacity" includes absence from Kenya or inability for any reason to perform the functions of the office

PART IV – FINANCIAL PROVISIONS

16. The funds of the Authority shall include -

Funds of the Authority

- (a) monies appropriated by Parliament for purposes of the Authority;
- (b) monies that accrue or vest in the Authority in the course of the performance of its functions under this Order;
- (c) gifts, grants or donations made to the Authority; 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 this Authority

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

Financial Year.

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

Annual estimates.

(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 allowances and other charges in respect of the members of Board of the Authority;
- (b) the payment of salaries, pensions, gratuities and other charges in respect of retirement benefits to staff of the Authority;
- (c) the proper maintenance of buildings and grounds 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 reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of other

matters as the Board may consider necessary.

(3) The annual estimates shall be presented to the Board for approval before the commencement of the financial year to which they relate.

(4) Once the annual estimates are approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

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

Accounts and
audit.

19. (1) The Board shall cause to be kept all proper books and records of accounts of 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 or to an auditor appointed under sub paragraph (3), the accounts of the Authority together with-

- (a) a statement of income and expenditure during the year; and
- (b) a statement of assets and liabilities on the last day of the financial year.

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

(4) The appointment of the Auditor shall not be terminated by the Board without the prior written consent of the Auditor-General.

(5) The Auditor-General may give general or special directions to an Auditor appointed under sub-paragraph (3) and the Auditor shall comply with the directions.

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

(7) Within a period of six months after the end of financial year, the Auditor-General shall report on the examination and audit of the accounts to the Board and to the Cabinet Secretary, and in the case of an Auditor appointed under sub-paragraph (3), the Auditor shall send a copy of the report to the Auditor-General.

(8) 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 is desirable and the Auditor-General

shall carry out such an inspection once every six months.

(9) The Cabinet Secretary shall cause to be laid the Annual Audit Report before the National Assembly as soon as is reasonably practicable after the report is submitted to the Cabinet Secretary.

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

Investment of funds of the Authority.

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

21. The Board shall not charge or dispose of immovable property of the Authority without the prior approval of the Cabinet Secretary.

Disposal of assets of the Authority.

22. (1) 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 Authority for the immediately preceding financial year.

Annual report on Authority operations.

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

23. (1) The Cabinet Secretary for Finance and the Cabinet Secretary for Interior and Co-ordination of National Government, may by notice in the Gazette, specify the date or dates and the manner in which the vesting Schedule shall be transferred to and vested in the Authority.

Transfer of vesting Schedule

(2) A notice under sub-paragraph (1) shall specify the assets and liabilities of the former bodies which are to be transferred to the Authority.

(3) If, on the vesting day, any suit, appeal, arbitration or other proceedings of whatever nature and whosoever instituted in relation to the business of the former bodies which is by virtue of this section, transferred to the Authority, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former bodies or of anything contained in this Order, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Authority.

(4) In the case of assets and liabilities arising under any loans which vest in the former bodies on the vesting day, the Authority, may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.

(5) Any assets and liabilities of the former bodies which are not to be vested in the Authority shall be disposed of in such manner as the Cabinet Secretary for Finance shall determine.

Revocation of
L.N.26/2007.

24. The Kenya Information Technology Board Order, 2007 is revoked.

Transition and
saving provisions.

25. (1) All rights, liabilities and assets held by any body on behalf of the former bodies existing at the commencement of this Order, shall be automatically and fully transferred to the Authority.

(2) A State Organ, Public Office or Public Entity shall not enter into any new contract or contractual arrangement or procurement for the provision of goods or services covered by the mandate of the authority during the transition period without the prior written authorization of the Cabinet Secretary.

(3) The former bodies, shall continue to be liable to former employees who have retired on the vesting day for such pension benefits payable as they are entitled to under the regulations of those pension schemes.

(4) The staff of the former bodies existing prior to the commencement of this Order including those on secondment are eligible for employment by the Authority subject to appraisal and evaluation by the Board.

(5) Where any person whose services are transferred to the Authority, is on the vesting day, a member of any statutory or voluntary pension scheme or provident fund he shall, for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds his service with the Authority, shall be deemed to be service in the former bodies.

(6) The staff of the former bodies existing prior to the commencement of this Order including those on secondment are eligible for employment by the Authority subject to appraisal and evaluation by the Board.

(7) Every person who at the commencement of this Act is an employee of the former bodies not being under notice of dismissal or resignation, shall on the vesting day, become an employee of the Authority, as may be respectively specified by the Cabinet Secretary on the same or improved terms and conditions of service.

(8) Where on the vesting day—

(a) any disciplinary proceedings against any employee of the former bodies are in the course of being heard or instituted, or have been heard or investigated by the former bodies but no order or decision has been made thereon; or

- (b) any such employee is interdicted or suspended, the Authority, shall—
- (i) in the case of item (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of item (b), deal with such employee in such manner as it thinks appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings making of an order or the rendering of a decision, as the case may be, as if such disciplinary proceedings have been commenced by the Authority .
 - (iii) where on the vesting day, any penalty (other than dismissal) has been imposed on any employee of the former bodies pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such employee, he shall on his transfer to the Authority under this Order serve or continue to serve such penalty to its full term as if it had been imposed by the former bodies.

Dated the 8th day of August, 2013.

UHURU KENYATTA,
President.