



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE POSTAL CORPORATION OF KENYA ACT

CHAPTER 411

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CHAPTER 411

POSTAL CORPORATION OF KENYA ACT

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CHAPTER 411

POSTAL CORPORATION OF KENYA ACT

[Date of assent: 1st October, 1998.]

[Date of commencement: 1st July, 1999.]

An Act of Parliament to provide for the establishment of the Postal Corporation of Kenya, to provide for its powers and functions, and for connected purposes

[Act No. 3 of 1998, Legal Notice 85 of 1999, Act No. 18 of 2018.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Postal Corporation of Kenya Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Board" means the Board of Directors of the Corporation established under section 6;

"Corporation" means the Postal Corporation of Kenya established under section 3;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to communications.

PART II – ESTABLISHMENT AND MANAGEMENT OF THE CORPORATION

3. Establishment of the Corporation

(1) There is established a Corporation to be known as the Postal Corporation of Kenya.

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

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

4. Headquarters

The Headquarters of the Corporation shall be in Nairobi.

5. Functions of the Corporation

The Corporation shall, in accordance with the provisions of section 50 of the Kenya Information and Communications Act (Cap. 411A)—

- (a) provide and operate—

- (i) postal services, and perform incidental services relating to the receiving, collecting, sending, dispatching and delivering of postal articles and electronic mail;
 - (ii) postal financial services, and incidental services relating to the issuing, receiving, and paying of mobile e-money, mobile payments, money remittance business, money and postal orders, postal drafts, postal cheques, postal travellers' cheques, giro services, cash on delivery, collection of bills, virtual savings services, general electronic online agency services and registration and for delivery of newspapers and periodicals, and
 - (iii) electronic retail transfers and the National Payments System.
- (b) perform such other functions or duties as the Cabinet Secretary may, from time to time assign to it.

[Act No. 18 of 2014, Sch.]

6. Establishment of Board of Directors

(1) The management of the Corporation shall vest in a Board of Directors of the Corporation which shall consist of—

- (a) a chairman, who shall be appointed by the Cabinet Secretary;
- (b) the Postmaster-General, who shall be appointed by the Cabinet Secretary in consultation with the Board;
- (c) the Principal Secretary of the ministry for the time being responsible for communications, or his representative;
- (d) the Principal Secretary of the ministry for the time being responsible for finance, or his representative; and
- (e) not more than five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to communications commerce, industry or finance.

7. Powers of the Board

The Board shall have all the powers necessary for the performance of the functions of the Corporation under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) manage, control and administer the assets of the Corporation in such manner as best promotes the purposes for which the Corporation is established;
- (b) receive any gifts, grants, donations or endowments made to the Corporation or any other monies in respect of the Corporation and make disbursements therefrom in accordance with the provisions of this Act;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Corporation;
- (d) open a banking account or banking accounts for the funds of the Corporation;
- (e) invest any monies of the Corporation not immediately required for the purposes of this Act in the manner provided in section 21; and
- (f) determine the charges to be paid in respect of any postal service.

8. Conduct of business and affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule, but subject thereto, the Board may regulate its own procedure.

9. Delegation by the Board

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

10. Remuneration of Board members

The Board, in consultation with the Cabinet Secretary, shall pay members of the Board such remuneration, fees or allowances for expenses as the Board may determine.

11. Postmaster-General

(1) The Postmaster-General shall be the chief executive of the Corporation and shall, subject to the directions of the Board, be responsible for the day to day management of the Corporation.

(2) The Postmaster-General shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

12. Secretary to the Board

(1) There shall be a secretary to the Board who shall be appointed on such terms and conditions as the Board may determine and who shall perform such duties as the Board may, from time to time, assign.

(2) In the performance of his duties under this Act, the Secretary shall be responsible to the Postmaster-General.

13. Staff of the Corporation

The Board may appoint such officers or staff as are necessary for the proper discharge of the functions of the Corporation under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

14. The common seal of the Corporation

(1) The common seal of the Corporation shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

15. Protection from personal liability

Subject to section 16, no matter or thing done by a member of the Board or by any officer, employee or agent of the Corporation shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

16. Liability of the Board for damages

The provisions of section 15 shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

PART III – FINANCIAL PROVISIONS**17. Funds of the Corporation**

The funds of the Corporation shall consist of—

- (a) such moneys or assets as may accrue to or vest in the Corporation in the course of the exercise of its powers or the performance of its functions under this Act or any other written law;
- (b) such sums as may be payable to the Corporation pursuant to this Act or any other written law, or pursuant to any gift or trust;
- (c) such moneys as may be provided by Parliament for the purposes of the corporation; and
- (d) all moneys from any other source provided for or donated or lent to the Corporation.

18. Financial year

The financial year of the Corporation shall be the period of twelve months ending on the thirtieth of June in each year.

19. Annual estimates

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

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

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Corporation;
- (c) for the proper maintenance of the buildings and grounds of the Corporation;
- (d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Corporation;
- (e) for the creation of such 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 Board may deem fit.

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

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Board.

20. Accounts and audit

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

(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 subsection (3), the accounts of the Corporation together with—

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

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

(4) The appointment of an 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 subsection (3) and the 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) of this section.

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

(8) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Corporation's accounts or records if it appears to him desirable and the Auditor-General shall carry out such an inspection at least once every six months.

(9) Notwithstanding anything in this Act, the Auditor-General may transmit to the Cabinet Secretary a special report on any matters 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) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

(11) The fee for any auditor, other than a public officer, shall be paid by the Board with the approval of the Auditor-General.

21. Investment of funds

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

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

22. Annual Report

(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 Board for the immediately preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as reasonably practicable after it is submitted to him.

PART IV – MISCELLANEOUS PROVISIONS**23. Exemption of Corporation from liability**

(1) Save insofar as may otherwise be provided in regulations made under this Act or under the Kenya Information and Communications Act (Cap. 411A), the Corporation shall not incur any liability—

- (a) by reason of the loss, wrong delivery or delay of, or damage to, any postal article in the course of transmission by post; or
- (b) by reason of the interception, detention or disposal of any postal article in accordance with the provisions of any written law.

(2) Subject to the provisions of any regulations made under this Act, the Corporation shall not incur any liability by reason of the wrong payment of a money order:

Provided that nothing in this section shall absolve the Corporation from liability in cases where negligence is proven against it.

24. Limitation of actions

Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or the Kenya Communications Act, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or the Kenya Communications Act, 1998 or of any such duty or authority, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Postmaster General by the plaintiff or his agent;
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

25. Restriction on execution against property of Corporation

(1) Notwithstanding anything to the contrary in any written law—

- (a) where any judgement or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any property of the Corporation; but the Postmaster General shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation to the person entitled thereto;

- (b) no property of the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Postmaster General.

26. Service of notice, etc., on Postmaster-General

(1) Any notice or other document required or authorized under this Act to be served on the Corporation or on the Postmaster General, may be served—

- (a) by delivery of the notice or other document to the Postmaster General or to any authorized employee;
- (b) by leaving it at the office of the Postmaster General; or
- (c) by sending it by registered post to the Postmaster General.

27. Service of notice, etc., by Postmaster-General

(1) Any notice or other document required or authorized under any law to be served on any person by the Corporation or the Postmaster-General or any employee may be served—

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by registered post, addressed to that person at his usual or last known address.

SCHEDULE

[s. 8]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of office

(1) A member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding four years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one more term of a period not exceeding four years.

(2) The 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.

2. Vacation of office

A member other than the Chairperson or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission from the Chairperson; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud; or

- (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (v) is incapacitated by prolonged physical or mental illness; or
- (vi) is otherwise unable or unfit to discharge his functions.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may call a special meeting at any time where he deems it expedient for the transaction of the business of the Board.

(3) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairperson and an honorary treasurer.

(4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of the business of the Board shall be five members excluding the Postmaster-General.

(6) The Chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairperson shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall be excluded from the meeting at which such contract, proposed contract or other matter is being considered.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The common seal

The affixing of the common seal of the Board shall be authenticated by the signatures of the Chairperson, Corporation Secretary and the Postmaster-General

and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, Corporation Secretary and the Postmaster-General.

Provided that the Board shall, in the absence of either the Chairperson, Corporation Secretary or the Postmaster-General in any particular matter, nominate one or more members to authenticate the seal of the Board on behalf of either the Chairperson, Corporation Secretary or the Postmaster-General.

[Act No. 18 of 2014, Sch.]

6. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.
