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HEAD OF THE PUBLIC SERVICE

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March 11, 2020
Nairobi, Kenya

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The Attorney General
All Cabinet Secretaries
All Principal Secretaries
All Chairpersons and Chief Executive Officers, State Corporations

RE: MANAGEMENT OF STATE CORPORATIONS

Given the critical role of State Corporations in driving the country's development agenda, the government remains steadfast in its efforts to enhance reforms in their governance, management and oversight in line with the recommendations of the Presidential Taskforce on Parastatal Reforms, and the edicts of Executive Order No. 6 of 2016. This office has received various requests for clarity as to the organization and structuring of the governance structures of State Corporations. At the same time, the Ethics and Anti-Corruption Commission which is mandated to ensure compliance with the provisions of Chapter Six of the Constitution and the Leadership and Integrity Act, 2012 has raised pertinent issues on the conduct of boards and management of various state Corporations.

The key areas relate to integrity issues arising from the frequency of board meetings, payment of allowances, and mileage claims, as well as additional prescriptions to enhance performance and compliance. These concerns buttress the emphasis of probity in the manner in which State Corporations conduct their business. Consequently, your attention is drawn to the following directives and guidelines:

A. Board meetings

1. All Boards of Directors are required to submit their annual ALMANAC to SCAC through the parent Ministry by 30th June of

every year. This should be based on the organizational workplan, statutory obligations of the Board, and available budget.

2. For avoidance of doubt, the board meetings shall be restricted to a minimum of four as provided in the State Corporations Act and capped at a maximum six (6) for each financial year, or as may be specified in the respective enabling legal instruments. The same principle shall apply to respective Committees of the Boards. Consequently, Chief Executive Officers must ensure thorough preparation of Board papers and relevant documentation to facilitate efficient meetings.
3. Approval for any extra board meetings (including special board meetings) above the maximum number specified shall require a justification by the Board as to the source of funds, and implications thereof, and reasons why the same cannot be adjudicated in regular meetings, which request shall be submitted for approval by the relevant Cabinet Secretary, in consultation with SCAC.
4. All Board business (including Committee meetings) shall be transacted at the principal or registered office of the Corporation (not branch offices). Board retreats are to be approved by the respective Cabinet Secretary.

B. Establishment of Board Committees

1. Section 9 of the State Corporations Act, Cap 446 and select provisions of enabling legislation, empower Boards to establish committees to deal with such matters as the Board may specify and requires that notice of establishment of any such committee be served on the State Corporations Advisory Committee (SCAC).
2. As guided under *MWONGOZO*, the code of governance for State Corporations, a Board may establish not more than four (4) Committees, including the Audit Committee, to deal with the conventional issues appertaining to the running of the State Corporation. Each committee shall have a charter that outlines its roles and responsibilities as guided by SCAC.
3. The Board may however constitute Ad hoc Committees to deal with emerging issues that require focused attention and which do not fall in the domain of the regular Board Committees. Such Ad hoc Committees should have clear terms of reference and a limited lifespan.

4. The number of members to any Committees should be no more than one third (1/3) of the full Board to obviate the risk of a Committee conducting its business within the framework of a full Board structure. Further, members can only sit in a maximum of two committees. Any exceptions must secure written approval of the respective Cabinet Secretary in consultation with SCAC. The Board shall appoint the chairpersons of each Committee, with priority given to Independent Directors to serve in such capacities. The Board Chairpersons shall not sit in Committees as members or in attendance.
5. Except the members representing the National Treasury and parent Ministry, a member serving in the Board Audit Committee shall not be appointed member of Finance Committee and vice versa. The constitution of the Audit Committee should strictly comply with National Treasury circulars as issued from to time.
6. The Committee members shall serve for a continuous period of up to twelve (12) months, and thereafter be subject to rotation except for the National Treasury and Parent Ministry representatives as per (B5) above.
7. Where a Board does not have appropriate skills within its membership for purposes of effectively discharging its mandate, it may with the approval of SCAC, co-opt members on a need basis for a specified duration.

C. Transport and Mileage Allowance

1. Board Members and staff shall use the most economical and cost-effective means of transport while on official business whenever official transport is not provided.
2. Board members in particular may be reimbursed: -
 - (i) actual travel costs to and from official business or
 - (ii) actual mileage at prevailing AA rates when they use a personal car. Such mileage claims shall only be reimbursed against authenticated and registered car logbook(s) whose ownership is either the member; member's spouse; or a company in which the member's shareholding is not less than 50% + 1 shares.
3. Reimbursement of mileage claim is capped at 1800cc engine capacity of a vehicle.

4. For this purpose, all Board members shall be required to declare their residence from which they commute while attending to Board business at the time of appointment and upon any change thereafter. The residence is not automatically the rural home of natural birth, but where the Board member normally resides.
5. Chief Executive Officers shall be required to provide information to the respective Cabinet Secretary and SCAC any instances where a Board member's declared residence has a return transport cost implication that exceeds Kshs. 35,000/- per Board/Committee meeting, or where there is reason to believe that the information provided is not accurate.
6. Cabinet Secretaries may determine the continued service of any Board member whose return cost of transport exceeds Kshs 35,000 per Board/Committee meeting while nevertheless securing the requisite regional, gender and disability considerations in overall board composition. Exceptions to this prescription will require the express written approval of this office.
7. In instances where air transport is the most economical means to transport a Board member, but such a Board member opts to use their own vehicle, then the maximum reimbursable mileage claim shall be the equivalent of the cost of the return air-ticket. All other prevailing government prescriptions on air travel remain as specified.

D. Board Budgets and Expenses

1. In furtherance of the budget rationalization exercise undertaken by the National Treasury early this year, it has been decided that Board expenses for a financial year shall be capped at Kshs. 30 million or 5% of the Operations & Maintenance budget of the State Corporation, whichever is less. Any exceeding budgets shall require approval of the Cabinet Secretary for the National Treasury.
2. Field/inspection visits, as well as international engagements are an executive function that fall in the domain of executive team led by the Chief Executive Officer. The Board's involvement should therefore be minimized since the executive team or the Board's Internal Audit team bring up required reports to the Board. The Board's oversight of field works and projects can be further secured through other government agencies under the framework of 'One-Government-Approach'.

3. Board members are further requested to refrain from undertaking international training programmes that are locally available. Such workshops shall be organized by SCAC, or other corporate governance and management training organized by government training institutions. Any specialized international programmes identified by agencies for both Board Members and staff are to be brought to the attention of government training institutions for hosting/organization of the same where feasible.
4. Chief Executive Officers will be required to notify their Chairpersons when seeking travel clearance.

E. Board Evaluations

1. Corporate governance best practices require that Board of Directors conduct self-evaluation of its performance on an annual basis. Mwongozo, the Code of Governance for State Corporations, and government policy requires Board of Directors in State Corporations to carry out annual performance evaluation and file a report with the parent Ministry and the State Corporations Advisory Committee.
2. Board Evaluations take into account the performance of the Board itself, and the performance of the Chief Executive Officer on targets and directives as set by the Board in line with the Performance Contract. The evaluation outcomes will form the basis for renewal for a second and final term in both cases, as prescribed by Mwongozo.
3. Boards of State Corporations will be required to schedule an annual Board Self Evaluation activity as part of the Board Almanac, and notify SCAC of the same by 31st July, of each year. Board Evaluations cover the period 1st July to 30th June of the subsequent year.
4. All State Corporations will be required to undertake their Board Evaluations within the first four months of every financial year or as directed by SCAC. This will facilitate an early review of performance, and the implementation of performance improvement plans as developed.
5. In the interim, State Corporations that have yet to schedule and transmit information on their scheduled evaluation dates for FY18/19 are required to immediately programme the exercise within the period 1st March and 31st May, 2020 and submit a notification thereof to the Secretary, SCAC so as to be received on or before **25th March, 2020**.

F. Acting Chief Executive Officer

1. It has been noted that several State Corporations are being headed by Acting Chief Executive Officers beyond the stipulated period of 6 months. This is especially in circumstances where vacancies have arisen out of cases of natural attrition, retirement, resignation, end of term, criminal prosecution and other circumstances. In these cases, Acting Chief Executive Officers continue undertaking critical functions of their agencies, but without the full confidence and assurance of their positions.
2. Consequently, and in addition to guidelines as contained in circular no. OP/SCAC.9/73A (96) of 5th August 2016, Boards of State Corporations are to adhere to the following:
 - i. Where a vacancy exists in the office of the Chief Executive Officer arising from criminal prosecution, retirement, resignation, end of term, and other circumstances:
 - a. An Acting Chief Executive Officer is to be appointed by the Board in consultation with the parent Ministry within 7 days thereof.
 - b. Where the Board is unable to source an acting replacement from within the agency, the Chairperson shall consult the respective Cabinet Secretary to select a suitable officer from within the Ministry, who shall be seconded to the State Corporation, and appointed by the Board or as specified in enabling legislation.
 - c. In the case of vacancy arising from criminal prosecution, the Board of Directors shall immediately initiate disciplinary proceedings to determine whether the conduct of the suspended Chief Executive Officer constitutes misconduct that merits dismissal as per the Human Resource Instrument or applicable laws and regulations, and may terminate the contract of employment of the Chief Executive Officer in furtherance thereof;
 - d. In the case of vacancy arising out of any other natural attrition factors, the Board of Directors shall initiate the recruitment for a new Chief Executive Officer;

- e. Unless otherwise provided in enabling legislation, the Board of Directors shall appoint a new Chief Executive Officer in line with existing laws, regulations and guidelines.
3. Chairpersons of Boards of State Corporations will be required to ensure compliance with the directive on filling of acting positions within 6 months of their occurrence.
 4. It is hereby reiterated that contracts of employment are to be entered into, in the format and incorporating the terms and conditions as approved and communicated through government guidelines.

G. Human Resource Policy Instruments

1. Boards of Directors are required to ensure that they are implementing SCAC approved Human Resource Policy Instruments in line with circular no. OP/SCAC.9/21/1/1 of 15th May 2017. In the course of reviewing the Human Resource Policy Instruments, special attention should be given to: (a) Placement of the Head of Internal Audit between level two and three in the grading structure. The Office of Internal Auditor should similarly be functionally independent and answerable to the Board through the Audit Committee; (b) The establishment of the function of Corporation Secretary/Head of Legal Unit directly reporting to the Board, or serving under the Chief Executive Officer where specified as Secretary to the Board.
2. State Corporations are to file with SCAC their Human Resource Compliance Reports, including payroll reports for all cadres of staff by 31st July of each year.

H. Status of Human Resource Systems in State Corporations


The Government intends to automate the Human Resource (HR) function in the Public Service and consolidate the HR data for efficient and effective human resource management. To accomplish this, it was found necessary to make an assessment of state agencies using independent systems in human resource management and their linkages to other systems.

As a first step in the process, we require a record of all the systems in use in State Corporations for assessment and decision-making purpose. Automation and consolidation of HR data in the Public Service would go a long way to enable the Government to achieve the overall objective of Capacity Assessment and Rationalization of the Public Service (CARPS) and also comply with Article 232 (i) of the Constitution of Kenya 2010 which seeks to ensure that Government functions are properly structured and staffed to facilitate transformation of the Public Service at both the National and County Governments.

Agencies are to provide baseline data as per the table below and forward the same to the Principal Secretary, Ministry of Public Service by **25th March, 2020** to facilitate the analytical process.

Human Resource Management Function (Biodata, leave, payroll)	Type of System (Oracle, SAP, Open Source or Build)	System in use (if not say manual)	Linkages with other systems Enterprise Resource Planning (ERP), Kenya Revenue Authority, National Social Security Fund	Name of State Corporation	
				Total Cost (Kshs.)	
				Purchase/Build	Annual Maintenance License

State Corporations may, through their respective Ministries, seek further guidance from this office on any other related circumstances that are not explicitly provided for in this circular. These directives take effect immediately.



JOSEPH K. KINYUA, EGH
HEAD OF THE PUBLIC SERVICE

Copy to: Hon. Ukur Yattani, EGH
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Attorney General
State Law Office
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Secretary/Chief Executive Officer
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