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OFFICE OF THE PRESIDENT

PERMANENT SECRETARY, SECRETARY TO THE CABINET
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Date: 23rd October, 2002

All Permanent Secretaries
All Chairmen of State Corporations
All Chief Executives of State Corporations

MANAGEMENT OF STATE CORPORATIONS

Your attention is drawn to the recently enacted "The Statute Law (Miscellaneous Amendments) Act, 2002" which inter alia, effected wide ranging amendments to the State Corporations Act, Cap. 446. The amendments affect significantly, the management, regulation and control of state corporations, and took effect on the 7th June 2002.

Following the amendments, all state corporations, including those hitherto exempted from any or all the provisions of the State Corporations Act, Cap. 446 will be expected to comply with the State Corporations Act as under:-

(a) Exemptions from the State Corporations Act, Cap. 446

With effect from 7th June 2002 state corporations will not be exempted from Sections 5, 11, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the State Corporations Act, Cap. 446. Hitherto exempted corporations are no longer exempt from the said sections.

Besides requirements for accountability and transparency, the sections relate to the following, among other issues: -

The requirement for,

- (i) a state corporation to seek the consent of the parent Minister to borrow funds in or outside Kenya;

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- (ii) the parent Minister, in consultation with the State Corporations Advisory Committee, to approve terms and conditions of service for the staff of a state corporation;
 - (iii) the parent Minister, in consultation with the Treasury and the State Corporations Advisory Committee, to approve retirement benefits schemes;
 - (iv) the parent Minister and Treasury to approve budgetary estimates;
 - (v) disposal of assets not taken into account in the approved estimates to be approved by the parent Minister and the Treasury;
 - (vi) preparation and maintenance of books of accounts;
 - (vii) the power of the Inspector-General (Corporations) to surcharge persons responsible for occasioning loss to or deficiency in the resources of state corporations
 - (viii) appraisal and monitoring of performance and compliance by the Inspector-General (Corporations);
 - (ix) directions of the State Corporations Advisory Committee.

Exceptions to the above provisions will however be considered when a programme of full privatization has been approved, and granted only when actual privatization is put in motion.

(b) Auditing of the Books of Accounts

The office of the Auditor-General (Corporations) has been merged with the office of the Controller and Auditor-General. Accordingly, all powers hitherto vested with the defunct Auditor-General (Corporations) are exercised by the Controller and Auditor-General. Any reference to the Auditor-General (Corporations) in both the State Corporations Act, Cap. 446 and the Exchequer and Audit Act, Cap. 412 should also accordingly be substituted with Controller and Auditor General.

State Corporations will be expected to continue keeping proper books of accounts. Auditing of the books of accounts of state corporations by private auditors will be carried out only with the authority of the Controller and Auditor-General in accordance with Section 29 (1) (b) of the amended Exchequer and Audit Act, Cap. 412.

c) Establishment of the State Corporations Appeal Tribunal

Attention is drawn to the fact that the State Corporations Appeal Tribunal has been in existence since 2000 and has been handling appeals against surcharge decisions of the Inspector-General (Corporations).

d) Statute Law (Miscellaneous Amendments) Act of 1992

Attention is drawn also to the schedule to the 1992 amendments to the State Corporations Act, Cap. 446. These amendments, affecting Section 6(1) (c) and 6(2) reviewed the number of directors under the description "other members" from seven to eleven and increased their tenure and that of the chairman, to "...five years or such shorter period as may be specified in the notice...."

The length of tenure however continues to be the prerogative of the appointing authority.

e) Compliance with the Amendments

State Corporations will be required to demonstrate compliance as follows:-

- (i) **all state corporations which are not exempted from the provisions of the State Corporations Act, Cap. 446** should continue to subscribe to and comply with all the requirements of the Act;
- (ii) **state corporations hitherto exempted from the provisions of the State Corporations Act, Cap. 446** are now required to strictly comply with the requirements of Sections 5, 11, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of the Act.
- (iii) in addition, pursuant to powers conferred by Section 7(1) and Section 30 of the State Corporations Act, Cap. 446, Government issues from time to time, guidelines with regard to the better exercise and performance of the functions of state corporations.

Where such guidelines (including the ones set out in this circular) are at variance or conflict with any other earlier guidelines, the former will prevail in supersession.


S. J. Kosgei

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