

(Legislative Supplement No. 8)

LEGAL NOTICE NO. 18

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 NAIROBI METROPOLITAN AREA TRANSPORT
AUTHORITY ORDER, 2017

1. This Order may be cited as the Nairobi Metropolitan Area Transport Authority Order, 2017.

Citation.

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

Interpretation.

“Act” means the State Corporations Act;

Cap. 446.

“Authority” means the Nairobi Metropolitan Area Transport Authority established by paragraph 4;

“Board” means the Nairobi Metropolitan Area Transport Authority Board constituted in accordance with paragraph 8;

“Council” means the Nairobi Metropolitan Area Council constituted in accordance with paragraph 6;

“declared transport corridor” means a corridor comprising of a number of individually stated sections of roads or railways which the Authority requires in the discharge of its functions and which has been brought under the jurisdiction of the Authority in order for its quality to be maintained to published standards from the Authority;

“Metropolitan Area” means the Nairobi Metropolitan Area and includes the counties of Nairobi City, Kiambu, Machakos, Kajiado and Murang’a.

3. This Order shall apply to the Metropolitan Area.

Application.

4. (1) There is established an Authority to be known as the Nairobi Metropolitan Area Transport Authority.

Establishment of the Authority.

(2) The Authority shall be 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 or disposing of movable and immovable property; and

- (c) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

(3) The Authority shall be a joint authority in accordance with Article 189(2) of the Constitution.

(4) The headquarters of the Authority shall be in Nairobi, and it shall establish such other sub-offices in any location in the Metropolitan Area, as it may consider necessary for the discharge of its functions.

5. (1) The Authority shall oversee the establishment of an integrated, efficient, effective and sustainable public transport system within the Metropolitan Area.

Functions of the Authority.

(2) Without prejudice to the generality of the provisions of subparagraph (1), the Authority shall—

- (a) develop a sustainable integrated public transport strategy for the Metropolitan Area;
- (b) develop a sustainable urban mobility plan for the Metropolitan Area derived from the strategy;
- (c) formulate and oversee the development of a sustainable, evidentially based, Integrated Mass Rapid Transit System Strategy;
- (d) plan, regulate and co-ordinate the supply of adequate and effective Mass Rapid Transit System;
- (e) formulate and implement programmes and policies for the overall improvement of public transportation systems within the Metropolitan Area;
- (f) provide an enabling environment for orderly and structured development of the mass transit system, including both bus rapid transit and commuter rail within the Metropolitan Area;
- (g) coordinate with other government agencies and other parties for the development and operation of transport infrastructure, facilities and works necessary for the discharge of the functions of the Authority;
- (h) develop an inventory and undertake continuous evaluation of the declared road network status within the Metropolitan Area;
- (i) formulate strategies to ensure overall improvement in traffic flow, planned and programmed traffic engineering and traffic management works within the Metropolitan Area;
- (j) ensure optimal utilisation of intermodal means of transport including air, road, rail and non-motorised transport and any other modes targeting mass movement within the Metropolitan Area;

- (k) assist in poverty alleviation by increasing economic efficiency through lower transport costs and prices within the Metropolitan Area;
- (l) improve the environmental sustainability of the transport system in the Metropolitan Area;
- (m) facilitate the integration of transport and land use planning in the Metropolitan Area;
- (n) make better use of existing road space for all modes and reduce the need for the construction new roads within the Metropolitan Area;
- (o) regulate both on street and off-street parking on declared corridors and impose fees and penalties with respect thereto;
- (p) conduct studies and research for, amongst other things, identification of the Mass Rapid Transit System routes, corridors, network and service levels;
- (q) develop appropriate and sustainable funding mechanisms in order to achieve the objectives of the Authority; and
- (r) perform the any other functions vested upon the Authority under this Order.

6. (1) There shall be a Council for the Nairobi Metropolitan Area which shall consist of—

- (a) the Cabinet Secretary responsible for transport;
- (b) the Cabinet Secretary responsible for finance;
- (c) the Governor of Nairobi City County;
- (d) the Governor of Kiambu County;
- (e) the Governor of Machakos County;
- (f) the Governor of Kajiado County; and
- (g) the Governor of Murang'a County.

(2) The Cabinet Secretary responsible for transport shall be the chairperson of the Council.

(3) The Governor of Nairobi City County shall be the deputy chairperson of the Council.

(4) In the absence of both the chairperson and deputy chairperson, the members of the Council present shall nominate a member from their number, to preside over the meeting.

(5) The secretary to the Board appointed under paragraph 12 (1) shall provide secretarial services to the Council.

7. The Council shall—

- (a) be responsible for the development of policy and directions for purposes of this Order;
- (b) set goals and objectives and priorities for the Metropolitan Area;

Functions of Council.

Board of the Authority.

- (c) determine the financial contribution of each county to the funds of the Authority;
- (d) approve both the master plan and strategic plan prepared by the Authority;
- (e) declare, by Notice in the *Gazette*, transport corridors within the Metropolitan Area;
- (f) approve external funding and bilateral agreements in line with the national financial and fiscal policies; and
- (g) perform such other functions as are assigned under this Order.

8. (1) There shall be a Board of Directors of the Authority which shall consist of—

- (a) the chairperson of the Board, appointed by the President;
- (b) the Principal Secretary responsible for transport;
- (c) the Principal Secretary responsible for finance;
- (d) the County Executive Committee Member responsible for transport in each of the five counties of the Metropolitan Area;
- (e) the Director-General appointed under paragraph 13; and
- (f) three independent person who shall be appointed by virtue of their knowledge and experience in—
 - (i) transport;
 - (ii) law;
 - (iii) intelligent transport systems;
 - (iv) civil engineering;
 - (v) traffic engineering;
 - (vi) economics;
 - (vii) urban design, planning and management; or
 - (viii) any other relevant field .

(2) The appointment of the members of the Board under subparagraph (1) (f) shall be by the Council.

Functions of the Board.

(3) Every appointment under paragraph (1)(a) and (f) shall conform to sections 6 (2) and (3) of the Act.

9. (1) The Board of the Authority shall be responsible for the management and administration of the Authority and oversee the planning, development, maintenance and operation of an integrated and sustainable public transport network including, infrastructure and services that affect delivery of the Authority's mandate within the Nairobi Metropolitan Area.

(2) Without prejudice to the generality of the provisions of subparagraph (1), the Board shall—

- (a) approve and oversee the implementation of an Integrated Transport Master Plan;
- (b) oversee the development of a sustainable, evidentially based, Integrated Mass Rapid Transit System Strategy;
- (c) oversee the implementation of a comprehensive traffic management plan and strategy;
- (d) formulate additional standards and requirements for Mass Rapid Transit System and monitor their delivery;
- (e) enter into any agreement or partnership with any public sector agencies and other parties for the development and operation of transportation infrastructure, services or facilities, works, and equipment necessary for the discharge of the functions of the Authority;
- (f) regulate and enter into agreements with Mass Rapid Transit System Operators and Service Providers including—
 - (i) companies or owners of Mass Rapid Transit System rolling stock and service providers;
 - (ii) Mass Rapid Transit System operators;
 - (iii) Mass Rapid Transit System routes;
- (g) recommend to the Council, transport corridors to be declared as part of the Authority's Strategic Transport Network under this Order;
- (h) ensure compliance of any law or regulation on the functions of the Authority;
- (i) approve traffic management schemes and accesses along the declared corridors; and
- (j) perform the functions vested upon the Board under this Order.

Powers of the Board.

9. (1) The Board shall have all the powers necessary to manage and administer the Authority in a manner that shall enable the Authority to realize the objects and purposes for which the Authority is established and in particular, but without prejudice to the generality of the foregoing, the Board shall have the power to—

- (a) open a bank account for the funds of the Authority into which all moneys received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.
- (b) in consultation with the Council, enter into enter into contracts or association with such other persons, bodies or organizations within or outside Kenya as the Board may consider appropriate in furtherance of the objects and purposes of the Authority; and

- (c) determine, impose and levy rates, charges, dues or fees for any services performed by the Authority, or for the grant, renewal or validation of a licence, permit or certificate;
- (d) acquire such land or assets for the proper performance of its functions in accordance with the Constitution and laws of Kenya;
- (e) invest any of the Authority's funds not immediately required for the purposes of this Order; and
- (f) in consultation with the Council, carry out any other activity that is in the opinion of the Board, will promote and facilitate realization of the objects and purposes for which the Authority is established.

Delegation by the Board.

Corporation Secretary.

11. 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 Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Order or under any other written law.

12. (1) The Board shall competitively recruit a suitably qualified person, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Corporation Secretary of the Authority.

Director General.

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

13. (1) There shall be a Director-General of the Authority appointed by the Board, who shall be the Chief Executive Officer of the Authority and shall be responsible for the day to day operations and administration of the Authority.

(2) A person shall qualify for appointment as a Director-General, if that person—

- (a) holds a degree in any relevant field from a university recognized in Kenya;
- (b) has knowledge and experience in any of the following fields—
 - (i) transport economics;
 - (ii) civil engineering;
 - (iii) traffic engineering;
 - (i) urban planning and management; or
 - (v) any other relevant field.
- (c) has a distinguished career in a senior management position in either private or public sector;

- (d) holds at least ten years' post qualification professional experience; and
- (e) satisfies the requirements of Chapter Six of the Constitution.
- (3) A person shall not be qualified for appointment as a Director-General under subparagraph (1), if that person—
- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (b) is convicted of an offence involving dishonesty or fraud;
- (c) fails to comply with the requirements of Chapter Six of the Constitution; or
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.
- (4) The Director-General shall serve on such terms and conditions as specified in the instrument of appointment. Staff.
- (5) The Director-General shall be appointed for a term of three years and shall be eligible for reappointment for one further term. Funds of the Authority.
14. The Authority may employ such other officers, staff or agents as it considers necessary for the discharge of its functions and duties under this Order, and upon such terms and conditions as the Board may, in consultation with the relevant government institutions, determine.
15. The funds of the Authority shall consist of— Financial Year.
- (a) monies allocated by Parliament for the purposes of the Authority; Annual estimates.
- (b) such monies or assets as may accrue to the Authority in the course of the exercise of its powers or in the performance of its functions under this Order;
- (c) all monies from any other source provided, donated or lent to the Authority;
- (d) contributions from the counties in the Metropolitan Area; and
- (e) any other funds approved by law.
16. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.
17. (1) The Board shall, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned, and in particular, shall provide for the—
- (a) payment of salaries, allowances and other charges in respect of the Council members, Board members and the staff of the Authority;

- (b) payment of pensions, gratuities and other charges in respect to retirement benefits to the staff of the Authority; and
- (c) proper maintenance, repair, and replacement of the equipment and other movable property of the Authority.
- (3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate. Accounts and Audit.
- (4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subparagraph (3) or with the authorization of the Board given with prior written approval of the Council.
18. (1) The Board shall cause to be kept all proper books and other records of accounts of income, expenditure, assets and liabilities of the Authority. Annual report.
- (2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority, in respect of that year together with—
- (a) a statement of income and expenditure during that financial year; and
- (b) a statement of assets and liabilities of the Authority on the last day of that financial year.
19. The Board shall, on receipt of audited accounts for the preceding year, submit to the Council an annual report in respect of that year containing— Protection from personal liability.
- (a) the accounts of the Authority and statements referred to under paragraph 18(2)(a); Liability for damages.
- (b) the Authority's performance indicators and any other related information;
- (c) a report on the operations of the Authority during that year; and
- (d) such other information as the Council may request.
20. No matter or thing done by the Council, chairperson or any other member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done in good faith for the purposes of executing any provisions of this Order, render the chairman, member, officer, employee or agent or any person acting under the direction of those persons personally liable to any action, claim or demand. Dispute resolution mechanism.
No. 2 of 2012.
21. The provisions of this Order shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any works.

22. The mode of dispute resolution for any matter arising under this Order shall be dealt with in accordance with the provisions of Part IV of the Intergovernmental Relations Act, 2012.

Made on the 8th February, 2017.

UHURU KENYATTA,
President.