

THE GOVERNMENT OWNED ENTERPRISES BILL, 2024

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of this Act.
- 4— Application.
- 5— Role of the Cabinet Secretary for the National Treasury.
- 6— Role of the relevant Cabinet Secretary.

**PART II—PROCEDURE AND CRITERIA FOR ESTABLISHING A
GOVERNMENT OWNED ENTERPRISE**

- 7— Guiding principles for the establishment of Government Owned Enterprises.
- 8— Procedure for establishment of a Government Owned Enterprise.
- 9— Attributes of a Government Owned Enterprise.

PART III—MANAGEMENT OF GOVERNMENT OWNED ENTERPRISES

- 10—Board of Directors.
- 11— Qualifications for appointment as a chairperson or member of a Board.
- 12— Disqualification.
- 13— Selection panel.
- 14— Qualifications of members of the selection panel.
- 15—Vacancy.
- 16— Procedures of the selection panel.
- 17— Tenure of independent directors.
- 18— Role of the Board.
- 19— Board meetings.
- 20— Remuneration.
- 21— Audit Committee.
- 22— Chief Executive Officer.
- 23— Secretary to the Board.
- 24— Staff of Government Owned Enterprises.
- 25— Responsibility to the shareholders and the Government Owned Enterprise.

PART IV—PERFORMANCE

- 26—Business Plan.
- 27—Performance management.
- 28—Performance evaluation.

PART V—PUBLIC SERVICE OBLIGATIONS

- 29— Public Service Obligations.
- 30—Proposals.
- 31— Implementation of Public Service Obligations.

PART VI – REPORTING AND DISCLOSURE

- 32— Reporting.
- 33— Disclosure.
- 34—Financial transparency.

PART VII –GENERAL PROVISIONS

- 35— Dissolution and merger of Government Owned Enterprise.
- 36— Funds of a Government Owned Enterprise.
- 37— Financial year.
- 38—Annual estimates.
- 39—Regulations.
- 40—Transition provisions.
- 41—Consequential amendments.

A Bill for

AN ACT of Parliament to provide for the establishment, control, governance, performance and ownership of Government Owned Enterprises; public service obligations in respect of Government Owned Enterprises; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I— PRELIMINARY

Short title.

1. This Act may be cited as the Government Owned Enterprises Act, 2024.

Interpretation.

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

“Board” means the Board of a Government Owned Enterprise constituted in accordance with section 10;

“Chairperson” means a Chairperson of a Board of a Government Owned Enterprise appointed in accordance with section 10(2);

“Chief Executive Officer” means a person appointed in accordance with section 15;

“independent director” means an independent director of a Board of a Government Owned Enterprise appointed in accordance with section 10(1);

“Government” means the national government;

“government-linked corporation” means a corporation in which the national government or national government entity is a shareholder with less than fifty percent of the share capital of the corporation;

“Government Owned Enterprises” means an organisation which—

- (a) is a legal person under the ownership and control of the national government;
- (b) the national government or national government entity is a shareholder with more than fifty percent of the share capital of the corporation
- (c) has been assigned financial and operational powers to carry on a business activity;

- (d) as its main business, supplies goods or services in accordance with ordinary commercial principles; and
- (e) is financed wholly or substantially from sources that do not require annual appropriation by National Assembly, or imposition of a tax, levy or other charge under legislation.

“relevant Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the sector under which the business of the Government Owned Enterprise falls;

“relevant Ministry” means the Ministry for the time being responsible for the sector under which the business of the Government Owned Enterprise falls;

“Public Service Obligations” means obligations that the National Treasury may assign to Government Owned Enterprises which, involve activities that are not financially viable to the Government Owned Enterprise and for which a subsidy, or full funding, by means of budgetary resources is required to sustain the activities.

Objects of this Act.

3. The object of this Act is to—

- (a) establish an ownership regime and legal framework for better performance of Government Owned Enterprises and effective creation of value for the public;
- (b) establish governance structures that facilitate achievement of commercial objectives of Government Owned Enterprises;
- (c) enhance accountability and appropriate incentives for Government Owned Enterprises to operate on commercial principles;
- (d) position the Government as an informed and active owner that is neither too passive nor unduly interfering with Government Owned Enterprises; and,
- (e) establish a transparent Public Service Obligations accounting and funding structure that does not interfere with commercial objectives of the Government Owned Enterprises.

- (f) provide for separation and allocation of ownership roles between the National Treasury and the relevant Ministries;
- (g) establish a commercially-focused performance management framework for Government Owned Enterprises in which the National Treasury is the one-stop reference;
- (h) provide for the carrying out of public service obligations, on a separate operational and accounting basis and with contractual arrangements to give full compensation to Government Owned Enterprises for such activities, whenever Government Owned Enterprises are required to perform public service obligations;
- (i) enhance the standards of transparency and disclosure of corporate information and periodic reports of Government Owned Enterprises; and
- (j) empower minority shareholders in Government Owned Enterprises to participate, proportionately to their shareholding, in the election of persons to the Boards of directors.

Application.

Cap. 486

4. This Act shall apply to Government Owned Enterprises established under the Companies Act or under any other written law before the commencement of this Act.

Cap. 486

(2) Upon commencement of this Act, Government Owned Enterprises shall only be established as companies under the Companies Act.

(3) Notwithstanding the provisions of subsection (1) and (2), this Act shall not apply to state corporations that are established for non-commercial purposes.

Role of the Cabinet Secretary for the National Treasury.

5. (1) The Cabinet Secretary for the National Treasury shall exercise ownership functions over the Government Owned Enterprises by—

- (a) approving the establishment of Government Owned Enterprises;
- (b) holding shares of Government Owned Enterprises in trust on behalf of the national government;

- (c) nominating, through a structured, transparent and competitive search and selection process, persons to be appointment as non-executive directors of the Government Owned Enterprises;
- (d) entering into performance contracts with Government Owned Enterprises based on key performance indicators and agreed performance targets;
- (e) designing and implementing a performance incentive system for Boards of Directors of Government Owned Enterprises;
- (f) establishing a remuneration system for Boards of Directors of Government Owned Enterprises;
- (g) carrying out performance evaluation of Government Owned Enterprises; and
- (h) assigning, where necessary, Public Service Obligations to Government Owned Entities after approval by Cabinet.

(2) The Cabinet Secretary shall, from time to time, and not less than once a year, publish in the *Gazette* a list of Government Owned Entities.

Roles of the relevant Cabinet Secretary.

6. The relevant Cabinet Secretary—

- (a) may propose, for the approval by the Cabinet Secretary for the National Treasury, the establishment of Government Owned Enterprises;
- (b) may formulate sectoral policies that shall equally apply to Government Owned Enterprises and private enterprises in the sector; and
- (c) where necessary, propose Public Service Obligations to the Cabinet Secretary for the National Treasury for assignment to Government Owned Enterprises.

PART II—PROCEDURE AND CRITERIA FOR ESTABLISHING A GOVERNMENT OWNED ENTERPRISE

Guiding principles for the establishment of Government Owned Enterprises.

7. The following principles shall apply when determining establishment and dissolution of a Government Owned Enterprise—

- (a) there shall be a role for a Government Owned Enterprise to fill a gap left by the market forces;
- (b) a Government Owned Enterprise shall operate on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities;
- (c) where activities involving tax expenditures demonstrate that public expenditure is less effective in achieving the national government objective but can effectively be undertaken on a commercial basis; and
- (d) there is no overlap or duplication of functions when establishing a Government Owned Enterprise within the national government.

Procedure for establishment of a Government Owned Enterprise.

8. (1) Where a relevant Ministry requires a Government Owned Enterprise to be established, the relevant Cabinet Secretary shall submit to the Cabinet Secretary for the National Treasury, a written request for the proposed establishment of the Government Owned Enterprise.

(2) A Government Owned Enterprise may be established only with the prior approval of the Cabinet, and in accordance with the Companies Act.

(3) The request of the relevant Cabinet Secretary under subsection (1) shall be accompanied by—

- (a) a written business case to the Cabinet Secretary, with detailed justification for establishing the Government Owned Enterprise;
- (b) the business case in subsection (3)(a) shall be informed by a feasibility assessment report for the purpose of ascertaining—
 - (i) the financial and economic viability of establishing the proposed Government Owned Enterprise;
 - (ii) whether or not the proposed activity cannot be achieved through an existing Government

Cap. 486

Owned Enterprise or through the private sector;

(iii) whether or not there is need to establish a new Government Owned Enterprise;

(iv) the functions and objective that the Government Owned Enterprise establishment is supposed to attain;

(v) how the activities of the proposed Government Owned Enterprise will fit in the relevant Ministry's mandate and medium-term strategy, and aid the realization of the objectives of the programmes under the relevant Ministry;

(vi) how the establishment of the Government Owned Enterprise shall impact the fiscal position of the Government; and

(vii) the amount of Government share.

(4) Where the Cabinet Secretary for the National Treasury recommends the proposed establishment of the Government Owned Enterprise, the relevant Cabinet Secretary shall submit the request together with the recommendations of the Cabinet Secretary for the National Treasury regarding the financial and economic implications of establishing the Government Owned Enterprise to the Cabinet for consideration and approval.

(4) Upon approval of the establishment of the Government Owned Enterprise by the Cabinet, the necessary establishment processes shall be undertaken by the Cabinet Secretary for the National Treasury.

(5) Where in the assessment of the Cabinet Secretary for the National Treasury the request does not meet the criteria set in subsection (3), the Cabinet Secretary for the National Treasury shall inform the relevant Cabinet Secretary of the outcome of the assessment, in writing, within thirty days of receipt of the report and state the reasons thereof.

Attributes of a Government Owned Enterprise.

9. (1) A Government Owned Enterprise shall operate as a commercial entity and shall—

(a) operate for profit;

(b) be self-financing;

(c) be self-sustaining; and

(d) be accountable to the public through the National Treasury.

(2) Notwithstanding subsection (1), a Government Owned Enterprise may, in addition to its commercial functions, perform Public Service Obligations.

(3) A Government Owned Enterprise which also performs Public Service Obligations shall operate on a commercial basis and shall, for the purpose of financing the achievement of Public Service Obligations, be funded through the Government budgetary resources.

(4) The operations of a Government Owned Enterprise shall be undertaken in accordance with this Act, and the instrument of incorporation.

(5) The Cabinet Secretary shall annually, publish an inventory of Government Owned Enterprises in the *Gazette*.

PART III—MANAGEMENT OF GOVERNMENT OWNED ENTERPRISES

Board of Directors.

10. (1) A Government Owned Enterprise shall be managed by a Board of Directors which shall consist of—

(a) a chairperson, who is an independent director;

(b) six persons who are independent directors;

(c) one person who is a public officer nominated by the Cabinet Secretary for the National Treasury from within the National Treasury;

(d) one person who is a public officer designated in writing by the Cabinet Secretary for the relevant Ministry; and

(e) the chief executive officer who shall be an *ex officio* member of the Board.

(2) The chairperson shall be elected by the Board of directors from among the independent directors.

(3) The Cabinet Secretary for the National Treasury shall nominate persons to be appointed, by a Government Owned Enterprise as independent directors.

Qualifications for appointment as a chairperson or member of a Board.

11. (1) A person shall be eligible for appointment as a chairperson or member of a Board of a Government Owned Enterprise if the person—

- (a) has proven business leadership or relevant professional experience;
- (b) has served in a position of senior management or leadership for a period of at least five years;
- (c) has not served in the same Government Owned Enterprise as an employee in the preceding five years; and
- (d) meets the requirements of Chapter six of the Constitution.

Disqualification.

12. A person is not qualified to be appointed as an independent director of a Government Owned Enterprise if that person—

- (a) was employed by the Government Owned Enterprise or its related parties, including its major shareholders, in the past five years;
- (b) is an adviser or consultant to the Government Owned Enterprise or its related parties and is affiliated with a company that is an adviser or consultant to the Government Owned Enterprise or its related parties;
- (c) is affiliated with a significant customer or supplier of the Government Owned Enterprise or its related parties, including banks or other financial institutions owned by the Government or any of its major shareholders;
- (d) has personal service contracts with the Government Owned Enterprise, its related parties, or its senior management;
- (e) is affiliated with any organisation, that receives significant funding from the Government Owned Enterprise or its related parties;

- (f) is employed as an executive of another company where any of the company's executives serve on that company's board of directors;
- (g) is a member of the immediate family of an individual who is, or has been during the past five years, employed by the Government Owned Enterprise or its related parties as an executive officer;
- (h) is, or has in the past five years has been, affiliated with or employed by a present or former auditor of the Government Owned Enterprise or of a related party;
- (i) is a controlling person of the Government Owned Enterprise (or member of a group of individuals or entities that collectively exercise effective control over the company) or such a person's close relative, widow, in-law, heir, legatee, and successor of any of the foregoing or the executor; or
- (j) has in the past five years been affiliated with a political party.

Selection panel.

13. (1) The Cabinet Secretary for the National Treasury shall appoint a search and selection panel which shall conduct a structured, transparent and competitive process of search and selection of persons for nomination by the Cabinet Secretary for appointment by the respective Government Owned Enterprises as independent directors.

(2) In the case of Government Owned Enterprises that are not wholly-owned by the Government, the Cabinet Secretary for the National Treasury shall participate in the election by shareholders of persons to be appointed as independent directors and shall elect a number of directors proportionate to the Government shareholding in the Government Owned Enterprise.

(3) In the case of government-linked corporations, the Cabinet Secretary for the National Treasury shall participate in the election by shareholders of persons to be appointed as independent directors and shall elect a number of directors provided in the shareholders agreement or such instrument.

(4) The shareholders agreement under subsection (3) shall take into consideration the propositions of the shareholding of all shareholders.

(5) The members of the search and selection panel shall consist of—

- (a) four persons, who are not public officers appointed by the Cabinet Secretary;
- (b) one person who is a public officer appointed, by the Cabinet Secretary, from the National Treasury;
- (c) one person who is a public officer appointed in writing by the Principal Secretary for the State Department responsible for the sector under which the Government Owned Enterprise for which the recruitment is being undertaken falls; and
- (d) one person who is a public officer appointed from the Office of the President.

(6) The members of the search and selection panel other than the members under subsection (5) (b), (c) and (d) shall serve on a part-time basis for a non-renewable term of three years.

(7) The chairperson of the search and selection panel shall be a person elected by members of the panel from among the four persons who are not public officers.

(8) In appointing persons to be members of the search and selection panel, the Cabinet Secretary shall determine and apply an objective set of criteria, which criteria shall include diversity, independence of the persons and fulfilment of fit-and-proper requirements that the Cabinet Secretary shall issue.

(9) The search and selection panel may, from time to time, co-opt into the panel persons with specific expertise and skills.

(10) The search and selection panel shall determine and apply an objective set of criteria for search and selection of persons, which criteria shall include diversity, independence of the persons and fulfilment of fit-and-proper requirements that the Cabinet Secretary shall issue.

(11) The Cabinet Secretary for the National Treasury shall facilitate the operations of the selection panel.

Qualifications of members of the selection panel.

14. (1) A person shall qualify for appointment as a member of the selection panel, if that person—

- (a) holds a degree from a university recognised in Kenya in a relevant field;

- (b) has demonstrable leadership experience in the private or public sector;
- (c) has served in a senior management position for a period of at least ten years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not qualify for appointment as a member of the selection panel, if that person—

- (a) is a member of Parliament or county assembly;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been convicted of a felony; or
- (e) has been removed from public office for contravening the provisions of the Constitution or any other law.

Vacancy.

15. A person shall cease to be a member of the search and selection panel only if the person—

- (a) becomes incapacitated to discharge their duties;
- (b) is adjudged bankrupt by a competent court of law;
- (c) becomes absent without the permission of the search and selection members for more than three meetings of the panel;
- (d) resigns by written notice given to the other members of the panel or to the Cabinet Secretary to the National Treasury;
- (e) is prohibited from being a panelist by a written law;
- (f) is convicted of a criminal offence by a competent court of law; and
- (g) becomes a holder of a political office whether or not in a legislative role.

Procedures of the selection panel.

16. (1) The selection panel shall develop its procedures for the recruitment and appointment of the Boards of directors in accordance with this Act.

(2) The selection panel shall maintain a proper record of all its meetings, including minutes, in such manner as it may determine.

Tenure of independent directors.

17. (1) In the case of a Government Owned Enterprise that is wholly-owned by the Government, an independent director once appointed shall serve for a three-year term, renewable once.

(2) In the case of a Government Owned Enterprise that is not wholly-owned by Government, an independent director once appointed shall serve for a period of time that may be required, by a legal instrument, before a director is due to retire by rotation.

(3) A person shall cease to be an independent director only if the person—

- (a) becomes incapacitated to discharge the duties of a director;
- (b) is adjudged bankrupt by a competent court of law;
- (c) becomes absent from three consecutive meeting of the Board without the directors' permission;
- (d) resigns by written notice given to the other directors or to the Government Owned Enterprise;
- (e) is prohibited from being a director by a written law;
- (f) is convicted of a criminal offence by a competent court of law;
- (g) becomes a holder of a political office whether or not in a legislative role; and
- (h) becomes an employee of the Government or a Government Owned Enterprise.

(4) A person shall not cease to be an independent director for reasons other than those stipulated in subsection (3).

Role of the Board.

18. The Board of a Government Owned Enterprise shall be responsible for—

- (a) appointment and removal of the Chief Executive Officer;
- (b) establishing the terms and conditions of employment of the Government Owned Enterprise staff, taking into consideration all relevant factors such as industry dynamics and sustainability of the Government Owned Enterprise, and subject to such guidelines as the Cabinet Secretary for the National Treasury may issue;
- (c) setting of the Government Owned Enterprise strategic direction and approval of strategic plans;
- (d) approval of a Government Owned Enterprise annual budgets and the related funding at the Government Owned Enterprise level;
- (e) setting key performance indicators for the Chief Executive Officer;
- (f) putting in place risk governance and risk management systems and processes, including setting the risk appetite for the Government Owned Enterprise business, taking into consideration shareholder risk preference;
- (g) establishing and overseeing internal control systems and their continuous testing for efficiency and effectiveness;
- (h) performance evaluation of the Chief Executive Officer and top-level management;
- (i) entering into performance contracts with the National Treasury;
- (j) putting in place systems and processes to ensure compliance with all legal and regulatory requirements and frameworks;
- (k) putting in place succession management framework and business continuity plan comprising—
 - (i) nomination processes to identify candidates for consideration by the Cabinet Secretary for appointment to the Board; and

(ii) succession plans for the Chief Executive Officer and other critical positions within management ranks of the Government Owned Enterprise; and

(l) establishing and implementing a Board self-evaluation system.

Board meetings.

19. (1) The Board of a Government Owned Enterprise shall meet—

(a) at least once in every three months; and

(b) at other times that the Board considers necessary for the efficient management of the business and affairs of the Government Owned Enterprise.

Remuneration.

20. (1) The remuneration of directors of Government Owned Enterprises shall be governed by the remuneration structure and guidelines issued by the Cabinet Secretary from time to time.

(2) The remuneration for directors may include—

(a) directors' fees to be recommended by directors of individual Government Owned Enterprises with the concurrence of the Cabinet Secretary and determined at the Annual General Meeting or, in the case of Government Owned Enterprises wholly-owned by Government, approved by the Cabinet Secretary;

(b) sitting allowance to be determined by the Cabinet Secretary; and

(c) a bonus-type annual pay as a reward based on the extent of achievement of targets under the performance contract signed between the Cabinet Secretary and the Government Owned Enterprise.

(3) The directors' fees and sitting allowances under subsections (2)(a) and (b) shall not be performance based.

Audit Committee.

21. (1) The Board of a Government Owned Enterprise shall establish an audit committee, whose members shall be financially literate and majority of them, including its chairperson, shall be independent directors.

(2) The audit committee shall be responsible for—

- (a) recommending to the Board the appointment of external auditors by the Government Owned Enterprise and shall consider any questions in respect of external auditors, audit fees and provision by external auditors of any service to the Government Owned Enterprise in addition to audit of its financial statements;
- (b) assurance on appropriateness of measures to safeguard the assets of a Government Owned Enterprise's assets;
- (c) reviews of all reports and communications with external auditors;
- (d) review of half-yearly and annual financial statements of the Government Owned Enterprise, prior to their approval by the Board;
- (e) ensuring coordination between the internal and external auditors of the Government Owned Enterprise; and
- (f) overall assurance to the Board on internal control and risk governance systems.

Chief Executive Officer.

22. (1) There shall be a Chief Executive Officer of a Government Owned Enterprise who shall be competitively recruited and appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

(2) The Chief Executive Officer of a Government Owned Enterprise shall be a member of the Board of directors but shall not have the power to vote.

(3) A person shall qualify for appointment as a Chief Executive Officer, if such person—

- (a) holds a degree in the relevant field from a university recognized in Kenya;
- (b) has at least ten years work experience in a relevant field;
- (c) has served in a position of senior management for a period of at least five years; and

(d) meets the requirements of Chapter Six of the Constitution.

(4) A person shall not qualify for appointment as Chief Executive Officer if such person—

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been convicted of a felony; or
- (e) has been removed from public office for contravening the provisions of the Constitution or any other written law.

(5) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for reappointment for one further term.

(6) The Chief Executive Officer shall—

- (a) be responsible to the Board of the Government Owned Enterprise for the day-to-day management of the affairs of the Government Owned Enterprise; and
- (b) perform such other functions as the Board may direct.

(7) The Chief Executive Officer may be removed from office on any of the following grounds—

- (a) serious violation of the Constitution or other law;
- (b) gross misconduct;
- (c) physical or mental incapacity to perform the functions of the office;
- (d) unsatisfactory performance; or
- (e) bankruptcy.

(8) Before removal under subsection (5), the Chief Executive Officer—

- (a) may be suspended from office by the Board;
- (b) shall be informed, in writing, of the reasons for the intended removal; and
- (c) shall be given an opportunity to put in a defence against any such allegations.

Secretary to the Board.

23. (1) There shall be a Secretary to the Board of a Government Owned Enterprise who shall be qualified in terms of the law governing the practice of public secretaries and appointed by the Board.

(2) The Secretary to the Board shall hold and vacate the office of Secretary in accordance, with the terms specified in the instrument of appointment to that office.

(3) The Secretary to the Board shall attend all the meetings of the Board and may, with the consent of the person presiding at a meeting, offer an advisory opinion or take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

(4) The Secretary to the Board shall be responsible for—

- (a) arranging the business of the Board;
- (b) the Board meetings;
- (c) keeping the records of the Board meetings;
- (d) keeping of records of the proceedings of the Board; and
- (e) performing such other duties as the Board may direct.

Staff of Government Owned Enterprises.

24. A Government Owned Enterprise may appoint such officers and other staff as are necessary for the proper discharge of the functions of the Government Owned Enterprise, upon such terms and conditions of service as the Board may determine, subject to such guidelines as the Cabinet Secretary for the National Treasury may issue.

Responsibility to the shareholders and the Government Owned Enterprise.

25. (1) The Board shall ensure its obligations to shareholders of the Government Owned Enterprise are fulfilled and that the shareholders are duly informed in a timely manner of all material events through shareholder meetings and other communications as necessary.

(2) The Boards shall develop and implement a code of conduct for the members of the Boards, as well as the employees of the Government Owned Enterprises, with a view of ensuring the adherence to the highest professional standards and corporate values.

(3) The code of conduct developed under this subsection (2) shall be effectively communicated within the Government Owned Enterprise together with supporting policies and procedures, including adequate systems and controls for the identification and the redress of grievances arising from unethical practices.

PART IV—PERFORMANCE

Business plan.

26. (1) The Board of a Government Owned Enterprise shall, prior to the commencement of a financial year, adopt a business plan based on the strategic plan.

(2) The business plan must be effective on the first day of the financial year to which it applies.

(3) The business plan of a Government Owned Enterprise shall form the basis of annual performance contracts to be signed between the Cabinet Secretary for the National Treasury and the Government Owned Enterprise.

Performance management.

27. (1) The Cabinet Secretary for the National Treasury by means of performance contracts shall convey to each Government Owned Enterprise performance targets for the period.

(2) The Board of a Government Owned Enterprise shall enter into performance contracts with the Cabinet Secretary.

(3) The performance contracts under subsection (1) shall be designed to enhance the commercial performance of a Government Owned Enterprise in ways that will—

- (a) safeguard the long-term sustainability of the Government Owned Enterprise;
- (b) enable the shareholders to make a return commensurate with the level of investment made in the Government Owned Enterprise; and
- (c) minimize the fiscal cost and risks emanating from the Government Owned Enterprise to the national exchequer.

(4) The provisions of this section shall not apply to government-linked corporations.

Performance evaluation.

28. (1) The Cabinet Secretary for the National Treasury shall be responsible for performance evaluation of Government Owned Enterprises and for purposes of performance evaluation, may co-opt relevant external experts that may include those from relevant Ministries.

(2) The performance evaluation of Government Owned Enterprises under subsection (1) may be based on audited financial statements and any other parameters as the Cabinet Secretary for the National Treasury may determine.

(3) The Board of a Government Owned Enterprise shall be responsible for evaluation of performance of the Chief Executive Officer and top-level members of management of the Government Owned Enterprise.

(4) The Cabinet Secretary for the National Treasury may determine a performance incentive system for Boards of Government Owned Enterprises.

(5) The Board of a Government Owned Enterprise may determine a performance incentive system for the Chief Executive Officer and the rest of the staff of the Government Owned Enterprise.

PART V—PUBLIC SERVICE OBLIGATIONS

Public
Obligations.

Service

29. (1) For purposes of this part, Public Service Obligations of a Government Owned Enterprise are obligations to perform activities that the Board of a Government Owned Enterprise establishes to the satisfaction of the Cabinet Secretary for the National Treasury—

- (a) are not in the commercial interests of the Government Owned Enterprise to perform;
- (b) arise because of a direction, notification or duty to the public by the Government Owned Enterprise; and
- (c) do not arise because of the application of the commercial principles.

(2) Notwithstanding subsection (1), the Cabinet Secretary for the National Treasury shall not assign Public Service

Obligations to listed Government Owned Entities and government-linked corporations.

Proposals.

30. (1) A proposal on Public Service Obligations to be assigned to a Government Owned Enterprise may be originated by the relevant Ministries for consideration by the Cabinet Secretary for the National Treasury.

(2) The Cabinet Secretary for the National Treasury upon evaluating the merits of the proposal of the Public Service Obligations for assignment to a Government Owned Enterprise may submit the proposal to the Cabinet for consideration.

(3) The Cabinet Secretary for the National Treasury shall assign a Public Service Obligation to a Government Owned Enterprise only after approval by Cabinet.

(4) The Public Service Obligations shall be—

(a) costed and accounted for separately;

(b) audited separately; and

(c) time bound.

(5) The National Treasury shall not originate Public Service Obligations for assignment to Government Owned Enterprise.

(6) The Cabinet Secretary for the National Treasury may limit the number of Public Service Obligations that may be assigned to an individual Government Owned Enterprise.

(7) Public Service Obligations shall not form part of performance contracts to be signed between the Cabinet Secretary for the National Treasury and a Government Owned Enterprise.

(8) The Cabinet Secretary for the National Treasury may, from time to time, issue guidelines on Public Service Obligations.

Implementation
Public
Obligations.

of
Service

31. (1) Before submitting a proposal to the Cabinet, the Cabinet Secretary for the National Treasury may in writing inform the Government Owned Enterprise of the proposal of the Public Service Obligation.

(2) Within thirty days of receiving the written proposal from the Cabinet Secretary for the National Treasury, the Government Owned Enterprise shall respond to the notice in writing, stating,

with reasons, whether or not the Government Owned Enterprise agrees to give effect to the proposal.

(3) If the Government Owned Enterprise agrees to the proposal under subsection (2), the Cabinet Secretary for the National Treasury and the Government Owned Enterprise shall enter into negotiations with a view to agreeing arrangements under which the Government Owned Enterprise can give effect to the proposal without acting inconsistently with its primary objective.

(4) If an agreement is reached under subsection (3), the arrangements for giving effect to the proposal shall be incorporated in a Public Service Obligation agreement which shall—

- (a) be in writing;
- (b) be approved by the Cabinet Secretary and the Board of the Government Owned Enterprise;
- (c) include provision for funding or other resources to the Government Owned Enterprise;
- (d) if it provides for the Government Owned Enterprise to provide goods or services, shall—
 - (i) specify the goods or services, including any particular quantities;
 - (ii) specify an estimate of the annual total cost to the Government Owned Enterprise for providing the goods or service, and an estimate of the annual total revenue to be received by the Government Owned Enterprise for doing so; and
 - (iii) specify how the performance of the Government Owned Enterprise in providing the goods or services will be monitored and assessed.
- (e) may include any other matter, not inconsistent with this Act, that is agreed between the Cabinet Secretary and the Board of the Government Owned Enterprise.

(7) The Public Service Obligations under a Public service Obligation agreement shall be binding.

PART VI – REPORTING AND DISCLOSURE

Reporting.

32. (1) A Government Owned Enterprise shall make quarterly and annual reports to the Cabinet Secretary for the National Treasury in the manner that the Cabinet Secretary for the National Treasury may prescribe from time to time.

(2) The Cabinet Secretary for the National Treasury may make half-yearly reports on the Government Owned Enterprise to the Cabinet and annually to the National Assembly.

(3) The Cabinet Secretary for the National Treasury shall with respect to listed Government Owned enterprises make, based on publicly available information, analysed annual reports to Cabinet and the National Assembly.

(4) The Cabinet Secretary for the National Treasury shall with respect to government-linked corporations make public the performance or any other relevant information regarding the government-linked corporations.

Disclosure

33. (1) The Cabinet Secretary for the National Treasury shall make public, on the National Treasury website or on such other information platforms as may be accessible to the public—

- (a) audited annual reports of Government Owned Enterprises;
- (b) annual performance evaluation results of Government Owned Enterprises; and
- (c) reports on appointment of independent directors of Government Owned Enterprises and the procedures followed in arriving at such appointments.

(2) Government Owned Enterprises shall make public, on their individual websites or on such other platforms as may be accessible to the public—

- (a) audited annual reports;
- (b) annual performance evaluation results; and
- (c) annual report on anti-corruption activities completed.

Financial transparency.

34. The Board shall ensure that the Government Owned Enterprise, keeps financial records that—

- (a) correctly record and explain its transactions and financial position and performance;
- (b) enable financial statements to be prepared and be audited; and
- (c) clearly identify and disclose any transactions undertaken by the Government Owned Enterprise with any director or their close relatives, either directly or indirectly and comprising a pecuniary or non-pecuniary benefit through a company or other business established by such director.

PART VII –GENERAL PROVISIONS

Dissolution and merger of Government Owned Enterprise.

35. (1) A Government Owned Enterprise may be dissolved only with the prior approval of the Cabinet and in accordance with the legislation governing the dissolution of such Government Owned Enterprise.

(2) Subject to the provisions of a legislation enacted for the formation, management and dissolution of Government Owned Enterprise, a Government Owned Enterprise may be dissolved—

- (a) upon expiry of the lifespan of a Government Owned Enterprise as may be defined in the instrument of establishment;
- (b) where a Government Owned Enterprise has carried out the mandate for which it was created;
- (c) upon reorganization of a Government Owned Enterprise and associated government functions, and;
- (d) upon a merger of a Government Owned Enterprise with another

(3) The Cabinet Secretary for the National Treasury shall follow-up implementation of the findings and eventual recommendations for dissolution to ensure compliance.

(4) The Cabinet Secretary for the National Treasury may by notice in the *Gazette* prescribe guidelines for dissolution and mergers of Government Owned Enterprise.

(5) Upon approval by Cabinet of the recommendations to dissolve or merge a Government Owned Enterprise, the Cabinet Secretary for the National Treasury shall cause the dissolution or merge of the Government Owned Enterprise with another.

Funds of a Government Owned Enterprise. **36.** (1) The funds of a Government Owned Enterprise shall include—

- (a) such monies as may be appropriated to the Government Owned Enterprise by Parliament;
- (b) such fees, monies or assets as may accrue to or vest in the Government Owned Enterprise in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (c) monies from any other source provided for or donated or lent to the Government Owned Enterprise.

Financial year. **37.** Except as otherwise provided, the financial year of a Government Owned Enterprise shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates. Cap. 412A **38.** The annual estimates of Government Owned Enterprises shall be prepared in accordance with the Public Finance Management Act.

Regulations. **39.** The Cabinet Secretary for the National Treasury may make regulations generally for the better carrying into effect of the provisions of this Act.

(2) The Regulations under subsection (1) may prescribe—

- (a) a code of governance for Government Owned Enterprises
- (b) the procedure for merger and dissolution of Government Owned Enterprises;
- (c) provisions of a savings or transitional nature relating to the transition from the application of the Acts and subsidiary legislation in relation to Government Owned Enterprises to the application of this Act.
- (d) any other matter necessary for the implementation of this Act.

Transition provisions.

40. (1) A person who immediately before the commencement of the Act held the office of Chairperson of a Board of a Government Owned Enterprise, appointed in accordance with the relevant legislation, shall, subject to the provisions of this Act, serve as the Chairperson of the Board of a Government Owned Enterprise.

(2) A person who immediately before the commencement of the Act held the office of member of a Board of a Government Owned Enterprise, appointed in accordance with the relevant legislation, shall, subject to the provisions of this Act, serve as a member of the Board.

(3) A person who immediately before the commencement of the Act held the office of Chief Executive Officer of a Government Owned Enterprise, appointed in accordance with relevant legislation, shall subject to the provisions of this Act, serve as the Chief Executive Officer of the Government Owned Enterprise.

(4) A person who served as a staff member of a Government Owned Enterprise shall, subject to the provisions of this Act, continue in office as a staff member of the Government Owned Enterprise.

Consequential amendments.

Cap. 412A
Cap 486

41. (1) Section 2 of the State Corporations Act is amended in the definition of state corporation by adding the following new paragraph immediately after paragraph (viii)—

(ix) a Government Owned Enterprise established before or after the commencement of the Government Owned Enterprises Act, 2024.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the establishment, control, governance, performance and ownership of Government Owned Enterprises and public service obligations in respect of Government Owned Enterprises

PART I of the Bill provides for the preliminary provisions.

PART II of the Bill seeks to provide for the procedure and criteria for establishing a Government Owned Enterprise. Clause 7 and 8 provides for commercial principles and the procedure for establishing a Government Owned Enterprise while Clause 9 provides for the attributes of a Government Owned Enterprises.

PART III of the Bill seeks to provide for the management of a Government Owned Enterprises. Clause 10 of the Bill seeks to provide for the Board of A government Owned Enterprise. Further clause 14 provides for appointment of a Chief Executive Officer. Clause 22 of the Bill proposes to provide for a selection panel and their functions.

PART IV of the Bill seeks to provide for performance of a Government Owned Enterprise. Clause 26 seeks to provide for a business plan based on the strategic plan of the Government Owned Enterprise.

Clause 27 of the Bill further provides for performance management while Clause 28 of the Bill provides for performance evaluation.

PART V of the Bill under clause 29 seeks to provide for Public Service Obligations of the Government Owned Enterprises, Clause 30 seeks to provide for proposals of Public Service Obligations and Clause 31 seeks to stipulate enforcement of Public Service Obligations.

PART VI of the Bill seeks to provide for reporting and disclosure. Clause 32 and 33 provides for reporting and annual report respectively and Clause 34 provides for Disclosure while Clause 35 provides for financial transparency.

PART VI of the Bill seeks to provide for general provisions and they include dissolution, mergers, funds of the Government Owned enterprise while Clause 38, 39 and 40 seeks to provide for financial year, annual estimates and power by the Cabinet Secretary to make Regulations for the effective implementation of the Act. Clause 41 and 42 provides for transition provision and consequential amendments respectively.

NJUGUNA NDUNG’U, EGH

*Cabinet Secretary for the
National Treasury and Economic Planning.*