



REPUBLIC OF KENYA

EXECUTIVE OFFICE OF THE PRESIDENT

Report of The Presidential Taskforce on Parastatal Reforms

Presented to:

His Excellency Hon. Uhuru Kenyatta, C.G.H.
President and Commander-in-Chief of the Defence
Forces of the Republic of Kenya

October 2013

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Signature Page

Name of Member	Signature
Hon. Abdikadir H. Mohamed <i>Senior Advisor</i> <i>Constitution and Legislative Affairs</i> <i>Executive Office of the President</i> <i>Co-Chairperson</i>	<hr/>
Mr. Isaac Awuondo <i>Group Managing Director</i> <i>Commercial Bank of Africa</i> <i>Co-Chairperson</i>	<hr/>
Dr. Kamau Thugge <i>Principal Secretary</i> <i>The National Treasury</i>	<hr/>
Mr. Mugo Kibati, EBS <i>Director General</i> <i>Vision 2030 Delivery Secretariat</i>	<hr/>
Mr. Nelson Kuria, OGW, MBS <i>Group Managing Director</i> <i>CIC Group</i>	<hr/>
Dr. Korir A. Sing'oei <i>Legal Advisor</i> <i>Office of the Deputy President</i>	<hr/>
Ms. Carole Kariuki, MBS <i>Chief Executive Officer</i> <i>Kenya Private Sector Alliance (KEPSA)</i>	<hr/>
Mrs. Stella Kilonzo, MBS <i>Founder and Managing Director</i> <i>Astute Capital</i>	<hr/>
Ms. Anjali Mediratta <i>Private Sector</i>	<hr/>
Mr. Edward Burbidge <i>Founder and Chief Executive Officer</i> <i>Burbidge Capital Ltd</i>	<hr/>
Ms. Jane Mugambi, HSC <i>Secretary</i> <i>State Corporations Advisory Committee</i>	<hr/>

Co-opted Members and the Secretariat to the Taskforce

Co-opted Members

1. Mr. Joseph Kinyua, CBS - Senior Advisor, Economic Affairs, Executive Office of the President
2. Ms. Nancy Gitau, MBS - Senior Advisor, Political Affairs, Executive Office of the President
3. Mr. Njee Muturi - Solicitor General – State Law Office
4. Mrs. Sarah Serem - Chairperson, Salaries and Remuneration Commission
5. Mr. Edward M. Ngigi – Ag. Inspector General (Corporations)

Joint Secretaries

1. Mr. Simon Indimuli - Assistant Inspector General, Inspectorate of State Corporations
2. Mr. Phillip Nyingi, HSC - Research and Policy Advisory Officer, State Corporations Advisory Committee
3. Mr. Morris Kaburu - Consultant for Legal Affairs, Cabinet Office
4. Mr. Hamisi Williams – Senior Lecturer, Ministry of Agriculture

Co-opted Secretariat

1. Dr. Eric Aligula - Programmes Coordinator, Kenya Institute for Public Policy Research and Analysis
2. Mr. Peter Musyimi, HSC - Principal Legal Officer, Kenya Law Reform Commission
3. Mr. Munyori Buku - Director, External Communication – Presidential Strategic Communication Unit
4. Mr. Alexander George Owino - Consultant, The National Treasury
5. Mr. Brian Ikol - Legal Consultant, Cabinet Office and Advocate of the High Court of Kenya
6. Mr. Festus King'ori - Assistant Director, The National Treasury
7. Mr. Moses Njenga - Analyst, Kenya Institute for Public Policy Research and Analysis
8. Ms. Esther Manthi - Senior Legal Officer, Capital Markets Authority (CMA)
9. Ms. Grace Wandera – Ag. Director, Strategy and Marketing, Vision 2030 Delivery Secretariat
10. Mr. Stephen Gitau - Assistant Secretary, State Corporations Advisory Committee

Acknowledgements

His Excellency The President appointed the Taskforce on Parastatal Reforms on 23rd July 2013. While it is not feasible to list by name, every person and institution whose perspectives, expertise and time went into the development of this Report, the following deserve special mention.

First, the Taskforce would like to thank His Excellency the President, Hon. Uhuru Kenyatta, CGH, and the Government for the privilege and confidence bestowed on us, and for the honour given to us to contribute towards the reform agenda of these critical institutions to the growth and development of this country.

The Taskforce thanks Mr. Francis Kimemia, EGH, Secretary to the Cabinet, Mr. Stephen. K. Kirogo, EBS Principal Administrative Secretary, Cabinet Office in the Executive Office of the President (and the immediate former Secretary of the State Corporations advisory Committee) and Mr. Joseph Kinyua, CBS former Permanent Secretary/Treasury under whose stewardship the draft Policy and Bill under review were developed.

Special thanks are extended to the Committee on Delegated Legislation of the Ninth Parliament for their feedback captured in the draft policy that was a subject of review by this Taskforce. The work of the previous Taskforce that undertook a comprehensive review of State Corporations and culminated in a draft policy and bills that was the subject of review by the present Taskforce was a key consideration in the work done and is hereby acknowledged.

The Taskforce's work was conducted through the review of previous work undertaken by various institutions. For this, we thank the Principal Secretaries of the National Treasury, the Ministry of Agriculture, the Ministry of Education, the Office of the Attorney General and their representatives who were assigned to work closely with the Taskforce.

Further, the Taskforce recognises institutions that rendered critical assistance to it in coming up with the report. This included the State Corporations Advisory Committee (SCAC), the Inspectorate of State Corporations, the Department of Government Investment and Public Enterprises (DGIPE), the Kenya Institute for Public Policy and Research Analysis (KIPPRA), the Kenya National Bureau of Statistics (KNBS) and Dalberg Global Development Advisors who were instrumental in respect.

Special thanks are also extended to the Chairpersons, Board Members and Chief Executive Officers of all entities previously referred to as State Corporations who submitted information sometimes at a short notice that facilitated the work of the Taskforce.

Various participants in policy dialogues and stakeholder engagements as well as public submissions made possible the collation of literature, perspectives, information, and insights into the Government Owned Entities (GOEs) landscape in Kenya, which assisted the review process of the Taskforce. We thank all stakeholders and members of the public for providing valuable views that enriched this reform effort.

Finally, the Taskforce wishes to thank the Secretariat under the stewardship of Mrs. Jane Mugambi, Secretary, State Corporations Advisory Committee for their commitment and immense contribution towards completion of this enormous task by producing background papers, carrying out relevant research and compiling the report, the policy and drafting of the Bills in a short span of time.

To all, we thank you very much.

God Bless.

Foreword to the Main Report by the Joint Chairpersons of the Presidential Taskforce on Government Owned Entities Reforms

A review of global good practice in countries with similar development challenges as Kenya identifies five roles for Government Owned Entities (GOEs) in the national development effort. First, government owned entities are important in promoting or accelerating economic growth and development. Second, these entities are critical to building the capability and technical capacity of the state in facilitating and/or promoting national development. Third, they are important instruments in improving the delivery of public services, including meeting the basic needs of citizens. Fourth, they have been variously applied to the creation of good and widespread employment opportunities in various jurisdictions. Fifth, GOEs are useful for targeted and judicious building of international partnerships. In enabling states achieve the above goals, GOEs play a major role in enabling social and economic transformation of the economies in which they operate.

In Kenya, GOEs have been established and played these roles in diverse ways. The experience has been in some cases successful and in others not so. In the recent past Kenya has set itself an ambitious, but achievable development agenda, reflected in Vision 2030. This is further articulated in its Second Medium Term Plan, 2013 – 2017, which is the key implementation instrument. Faced with a challenging and fluid regional as well as global context, it is clear that it cannot be business as usual, if we are going to quickly and effectively address our development challenges. It will require significant transformation in the way we identify and apply, *inter alia*, our people, natural, financial and organisational resources. One of the key policy instruments that governments world over have applied in supporting national development have been GOEs, in Kenya referred to variously as parastatals, state corporations or semi-autonomous government agencies in some cases. These too, will need to be transformed for them to fully play their significant role in the national development process.

The Presidential Taskforce on Parastatal Reforms (PTPRs) was tasked with the responsibility of interrogating the policies on the management and governance of Kenya's parastatals with the aim of determining how best they would contribute to the pursuit of national development aspirations, facilitating the transformation of our country into a great land of prosperity and opportunity for all. In conducting this exercise, the PTPRs was exhorted by H.E. The President to always ask, (a) *"where does Wanjiku stand in this detailed framework?"* (b) *"Is the public sector working for her at all?"* (c) *"Is she getting value for her precious investment?"* This the Taskforce kept uppermost in their mind.

In dealing with the Terms of Reference, one of the most critical questions the Taskforce found itself having to confront was how to deal with the very corrosive implications of the *"mali ya umma"* attitude that seemed to adversely affect the management of a significant number of GOEs. Other related questions that exercised the PTPR were:

1. What is the actual definition of a state corporation in Kenya?
2. How the ownership, policy coordination and oversight functions are organized and are they supportive of the national development effort?
3. What are the challenges arising from this framework and how can these be reoriented to catalyse the transformation of GOEs in Kenya?
4. How can the country make responsive decisions on the establishment and dissolution of government owned entities to ensure harmony in mandates as well as ensure optimal performance and contribution to the national development effort?

5. How well are mandates of government owned entities linked to the national development agenda and what are the related challenges?
6. In light of the above, how should the government owned entities be reorganized to ensure conformity with the imperatives of the Constitution of Kenya 2010?

In execution of its mandate over a period of six (6) weeks, the taskforce benefitted from a review of reform initiatives conducted in diverse jurisdictions including South Africa, Australia, New Zealand, Singapore, Malaysia, China, Nigeria and the United Kingdom amongst others. In these countries, government owned entities have and continue to play significant and strategic roles in the development of their respective economies. They have played complementary, and not conflicting, roles in relation to the private sector in ensuring the competitiveness of these economies, through clear and positive engagement frameworks. It was also clear that the regulatory framework for government owned entities needs to reflect the national governance framework of each country.

This benchmarking review identified six key imperatives for achieving transformation of government owned entities to effectively support the national development agenda. One, countries that have experienced rapid and significant socio-economic transformation have worked because of a delicate balance between the state and markets. In this regard, the question has always been about achieving a positive place for the proactive state. Where the state engages in business, in the manner of state capitalism, it should do so on a purely commercial basis. In this respect, a clear separation of commercial and non-commercial roles is necessary. It is also important to ensure that non-commercial objectives are appropriately priced and funded. Two, for effective and complementary engagement between the state and markets, there must be a clear separation of policymaking, regulation and service delivery roles. Three, separation of government owned entities from mainstream government to minimize political interference in their management and decision-making was important. It is always about securing operational independence based on clearly defined performance objectives linked to national development objectives. Four, there should be effective and appropriate operational distance between these entities and the treasury and sector ministries, to optimize on the limited capacities to manage them. This would include clear and robust mechanisms for establishing or dissolving government owned entities. This should be done by the Ministries or if subsidiaries, by the government owned entities to ensure linkage to national development agendas. Five, for the regulatory or non-commercial government owned entities, efforts should be made to shield them from profit making decisions, while ensuring that they are able to commercialize their operations to minimize dependence on the Treasury for funding. In addition, for entities with regulatory mandates, efforts should be made to ensure they exercise independence in their decision-making supportive of sector policies and goals. Six, clear lines of accountability for performance must be secured at all times.

This report, therefore proposes fifteen key recommendations, which are aimed at transforming the management of the various government owned entities for purposes of achieving the national development agenda. In making these recommendations, the PTPRs was cognizant of the need to provide a timely and cost effective framework for their implementation.

Hon. Abdikadir H. Mohamed
*Senior Advisor, Constitution and Legislative
Affairs*
Executive Office of the President
Co- Chairperson

Mr. Isaac Awuondo
Group Managing Director
Commercial Bank of Africa
Co-Chairperson

Executive Summary

Introduction

The Presidential Taskforce on Parastatal Reforms was appointed by the His Excellency the President with a mandate to conclude the current policy review on the Sector with the aim of addressing the sectoral challenges while achieving Government policy priorities including:

1. Designing the most appropriate institutional arrangement for the sector taking into account:
 - a. Administrative, Governance, Managerial and Audit needs;
 - b. The many categories, types and sizes of institutions in the sector; and
 - c. The relevance, viability and duplication of mandates.
2. Taking into account the new Constitution and particularly devolution and the mandate of the Salaries and Remuneration commission (SRC);
3. Developing a clear mechanism for the Policy direction of the sector aimed at achieving desired national goals in the administration and management of the economy without hampering or degrading the commercial mandates or regulatory independence of the respective institutions;
4. Undertaking an audit of the human capital in the sector with the aim of getting qualified and capable people in the boards and senior management levels with specific bias to women, youth and other special categories of Kenyans; and
5. Developing a framework for establishment of a Sovereign Wealth Fund.

In this regard, views of the general public, professionals, Government Ministries/Departments and all State Corporations were invited in relation to the terms of reference. These views were collated and integrated together with reviews of previous work undertaken by various organizations, including the State Corporations Advisory Committee, the National Treasury, the Ministry of Agriculture, Ministry of Education, the Performance Contracting Department, the Retirement Benefits Authority, the National Social Security Fund, and the National Hospital Insurance Fund amongst others. Discussions with experts and stakeholders and desktop benchmarking reviews were also undertaken.

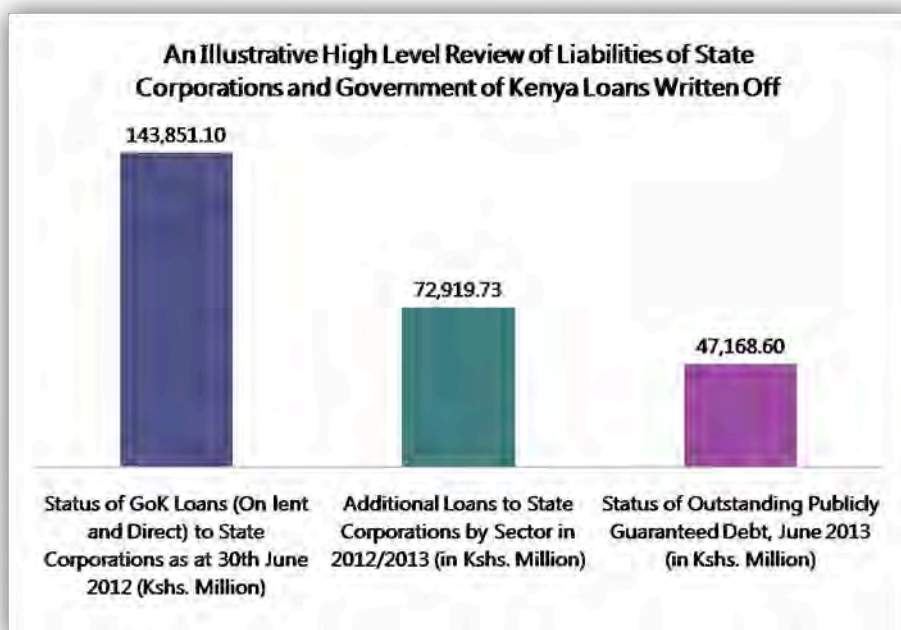
The report provides a review of the history and evolution of State Corporations including legal and institutional arrangements, ownership and oversight, governance framework, performance and the impact of the Constitution of Kenya 2010 and the national development goals. The report also reviewed the challenges facing State Corporations. To address these issues various approaches have been embraced leading to a re-definition of State Corporations and an elaborate re-organisation recommended rationalising the institutions with an intention to entrench efficiency and effectiveness in the institutional structures, governance and service delivery in the sector.

Government Owned Entities: The Policy Issues and Challenges

Performance

Available data shows that the output of State Corporations to GDP in nominal terms has been increasing from 9.54% in 2008/2009 to 11.64% in 2010/2011, based on internally generated income. In terms of employment and wage earnings, formal wage employment in State Corporations has been declining in both absolute numbers, as well as its share of the formal wage employment. This is perhaps a reflection of the withdrawal of the state from the sector through privatization efforts. On the other hand, data on average per capita annual wage earnings is rising faster than in the wider public sector or private sector, suggesting that the

State Corporations sector pays more than even the private sector or the overall public sector. This is anecdotal evidence as to why, apart from the clear efficiency and effectiveness arguments, there is a demand for establishment of more State Corporations.



In 2011/12, eleven (11) commercial State Corporations made losses, compared to twelve (12) in 2010/11 and sixteen (16) in 2009/10. This represents 21%, 23% and 31% respectively of all commercial oriented Government Owned Entities. The pattern of stock of publicly guaranteed debt to State Corporations in Kenya shows a decline in 2007 from 2006, but has been on an upward trend since then. The increase in this stock of debt is largely attributed to disbursements for creation of new infrastructure such as the Sondu Miriu Hydropower Project and Kenya Ports Authority under the Mombasa Port Modernization Project. It is also important to note from the Annual Public Debt Report 2011/2012, that of the Kshs. 961.3 million payments by the Government on Guaranteed Debt in 2011/12, 95.6% was on debt accruing to two (2) State Corporations, pointing to significant defaults in payments.

Out of the explicit contingent liabilities, available data shows that guaranteed debt in respect of Kenya Broadcasting Corporation (KBC) and the Tana and Athi River Development Authority (TARDA) has since crystallized and the Government of Kenya (GoK) guarantee called up. For KBC, the GoK has so far repaid Kshs. 9.29 billion leaving an outstanding amount of Ksh.5.997 billion. The loan in question was an Overseas Economic Cooperation Fund (OECF) [Japan] loan that was contracted in 1989 and guaranteed by GoK, in respect of the KBC Modernization Project. The OECF loan of Japanese Yen 15.441 billion (Kshs. 8,287,588,398 at the exchange rate at the time) had a moratorium period of 10 years (1989 – 1999) and repayment period of 20 years (1999 – 2019). KBC has not paid GoK any portion of this loan, but has continued to accumulate the liability (principal and interest amounts) in its books. As at 30th June 2012, the OECF loan reflected on KBC books as “GoK/OECF Loan” had accumulated to Ksh.28.925 billion, comprising a current (i.e. overdue) portion of Ksh.26.915 billion and a non-current portion of Ksh.2.010 billion. The total amount outstanding as at 30th June 2013 had risen to Kshs. 32.345 billion.

In respect of TARDA, the Government as at 30th June 2013 had repaid Kshs. 3.44 billion comprising Kshs. 2.34 billion in principal repayment and Ksh.1.1 billion in interest. Consequently, the amount refundable by TARDA to GoK as at 30th June 2013 was Kshs. 3.44 billion plus penalties amounting to Kshs. 7.7 billion. TARDA owed GoK Kshs. 11.14 billion in respect of this explicitly guaranteed debt as at 30th June 2013.

From time to time, Treasury carries out loan restructuring of individual State Corporations involving conversion of debt to equity (to the extent that the corporation's assets support) or debt write-off and subsequent discharge of corporations' obligation to repay or a combination of both. This compounds the liabilities arising from government owned entities. Given Kenya's growth plans under Kenya Vision 2030, it is expected that the level of debt will continue rising. The key concern will be to enhance the efficiency and effectiveness in applying this debt to support the national development effort.

It is also important to observe that there are notable successes, failures and missed opportunities in the history of State Corporations in Kenya. Safaricom, Kenya Airways and the financial sector regulators represent notable successes in the service delivery sector, clearly facilitating the positioning of Kenya as a financial, transport and communications hub in the continent and the world at large. In all these cases government entities which were not working optimally were either transformed through engagement with strategic and/or anchor investors, or introduction of missing links in the product value chains, which then added value before these could be partially privatized.

The Kenya Railways Corporation is a shell of its former self, despite its significant role in creation of and realization of the nation of Kenya. The lack of strategic vision of what this entity could and should do has led to selection of sub-optimal choices that have cascaded negative effects into the wider economy, beyond the railways itself. These include congestion and road carnage on our roads as well as high cost of doing business for the private sector and the government itself.

The Numerical Machining Complex (NMC), previously known as the Nyayo Motor Corporation limited represents a significant missed opportunity, pointing to lack of effective translation of strategic vision into tangible outputs contributing to the national development effort. A comparison of the NMC with the *Perusahaan Otomobil Nasional Sendirian Berhad* (Proton) established in Malaysia in 1983 clearly illustrates the issues. Proton adopted a strategic approach by collaborating with Mitsubishi and leveraging domestic demand to create a product that supported other parts of the Malaysian economy. The NMC failed in this regard.

The Kenya Meat Commission represents another missed opportunity for transforming the livestock industry in Kenya. The sad story that is the mismanagement of State Corporations has meant that Kenya has lost opportunities to other countries in the region and the world. This has worked to the detriment of the economy and the people of Kenya in terms of lost wealth creation opportunities.

The Kenyan approach in turning around the fortunes of GOEs will be key in the effort to unlocking shareholder value for the Kenyan public going forward.

The Policy Issues and Challenges

The performance of State Corporations (SCs) has been a matter of on-going concern in an environment of resource scarcity and mounting needs. A number of policy issues and challenges afflict SCs in Kenya, including:

1. Lack of clarity on the role that State Corporations should play in the economy. This is compounded by the apparent differences in opinion in respect of the exact role of the state in the national development effort;
2. Poor linkage of State Corporations activity with the national development goals;
3. Conflicting definition of what a state corporation is in the Kenyan context compounded by multiple legal and regulatory regimes creating significant ownership and oversight challenges;

4. Inadequate policy and policy coordination leading to poor definition of mandates, conflicts in mandates, as well as fragmentation of mandates that facilitate the proliferation of poorly resourced State Corporations. It also affects the facilitative role of the state in ensuring effective private sector development that supports the national development effort;
5. Poor governance leading to resource loss and burdening the public purse, including a multitude of legal and institutional frameworks that generate multiple reporting and accountability lines, compounding the challenge of effectiveness of Boards and Chief Executive Officers;
6. A number of Boards have been weak and/or ineffective, leading to failure to provide strategic direction, facilitating their emasculation;
7. Weak human resource and institutional capacity to attract and retain the skill sets needed to drive performance;
8. Lack of a clear government policy in respect of government linked companies;
9. Lack of clarity as well as abuse in the process of establishment and dissolution of government owned entities leading to lack of an accurate database on the number of SCs; and
10. An inadequate performance management framework that effectively links performance of SCs to national development goals and fails to adequately link individual performance to institutional performance.

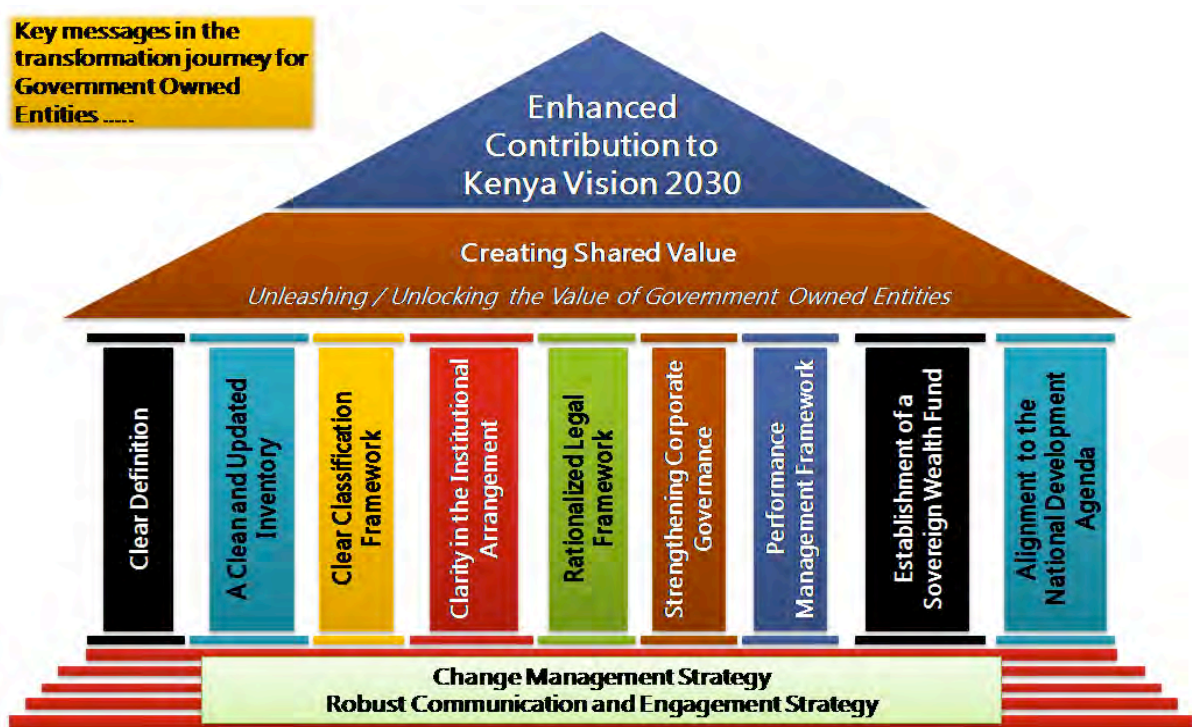
The Way Forward

Government owned entities (GOEs) will continue to play an important role in the development process of the country. Kenya's Vision 2030 requires a transformational mindset in the way business is conducted. In driving towards the goals set out under these well-elaborated programmes, the report concluded that GOEs will be expected to play five (5) key roles:

1. Promote and /or accelerate economic growth and development that will drive the social and economic transformation of Kenya to, *"a globally competitive and prosperous country with a high quality of life by 2030"*;
2. Support efforts aimed at building the institutional capability and technical capacity of the state in facilitating and/or promoting national development;
3. Improving delivery of public services, including meeting basic needs of citizens;
4. Support the creation of good and widespread employment opportunities in various sectors and across the entire country; and
5. Support targeted and judicious building of regional and international partnerships.

To address these challenges, the Presidential Taskforce on Parastatal Reforms has made some recommendations, responding to the terms of reference assigned to it. As illustrated in the chart on key messages, these recommendations and proposals are geared at transforming the operations and performance of GOEs to ensure that they generate value for money expended as well as reduce dependence on the Exchequer.

It is expected that GOEs will focus on creating and unlocking shared value for the people of Kenya. As illustrated, the journey towards transformation of GOEs will be built on nine (9) pillars, forming the key platforms driving the transformation agenda in respect of GOEs.



a. A Clear Definition of Government Owned Entities

The current approach to management and classification was examined and the problem traced to the definition of entities. In this respect, *all entities previously known as State Corporations shall henceforth be known generally as Government Owned Entities (GOEs)*. These GOEs have been clustered in four (4) broad classifications:

State Corporations

In order to remove ambiguity in definition and facilitate differentiated regulatory regime for Government Owned Entities a “State Corporation” shall be an entity howsoever incorporated that is solely or majority owned by the government or its agents for commercial purposes. A commercial function for the purpose of this policy is a function the dynamics of which are governed by a competitive profit driven market and that can be performed commercially but also serves a strategic socio-economic purpose as from time to time defined by the President. State Corporations therefore shall include:

- a. Commercial State Corporations; and
- b. Commercial Corporations with strategic functions that are to be defined through the national development planning process

These entities shall be incorporated and managed under the Companies Act Chapter 486.

State Agencies

There are other incorporated entities outside the mainstream civil service established for purposes of public service delivery. These bodies are agencies of the Government established for specified purposes and for purposes of policy and regulation and shall be known as State Agencies. For the avoidance of doubt, a State Agency shall be an entity howsoever incorporated by the Government to undertake a specific Government objective in delivering public service including regulation. These shall include:

- a. Executive Agencies
- b. Independent Regulatory Agencies
- c. Research Institutions, Public Universities, Tertiary Education and Training Institutions

County Corporations

A County Corporation is an entity howsoever incorporated that is solely or partly owned by a county government for commercial purposes. A commercial function for the purpose of this policy is a function the dynamics of which are governed by a competitive profit driven market and that can be performed commercially but also serves a strategic socio-economic objective.

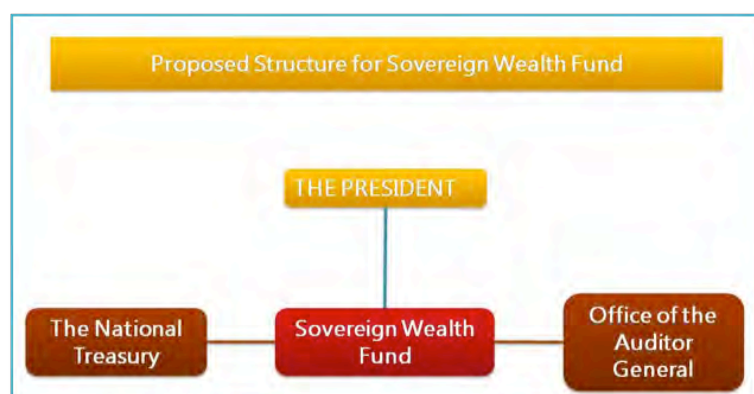
County Agencies

A County Agency is an entity howsoever incorporated by a county government to undertake a specific strategic county government objective in delivering public service. Such objective includes regulation and service delivery. These include County Executive Agencies and Joint County Authorities.

Exemptions from the Definition of Government Owned Entities

EXEMPTIONS FROM DEFINITION OF GOVERNMENT OWNED ENTITIES

- Cabinet Secretary to the Treasury Incorporation Act
- Co-operative Societies
- Building Societies
- Government Linked Corporations or any other Corporations in which the government, its agents or combined ownership with its agents is less than fifty percent (50%) of the issued share capital
- State Organs as defined in the Constitution
- Constitutional Commissions and Boards
- Independent offices established by the Constitution
- Business and Professional Associations, even if established by law
- Civil society, volunteer organizations and Trade Unions, even if established by law
- Associations of Universities and Colleges

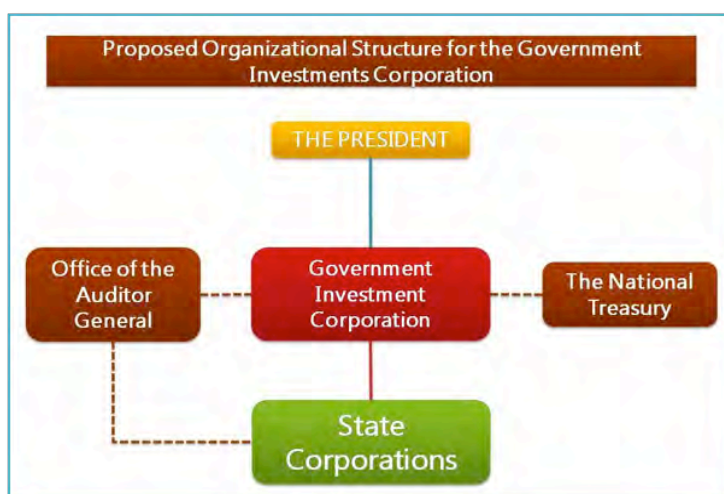


For purposes of the newly adopted definition and other consequential legal provisions, the organisations shown in the caption shall not be considered to be Government Owned Entities (GOEs).

b. A Clear Classification of Government Owned Entities

In line with the proposed definition it is recommended that

the current entities referred to as State Corporations be classified as State Corporations; Executive Agencies; Independent Regulatory agencies; and Research Institutions, Public Universities, Education and Training Institutions. In this regard, the GOEs, together with their subsidiaries are classified as shown in the table below. It is worth noting that the re-definition has occasioned a reduction in the number of GOEs in each category due to mergers, dissolutions and reviews of mandate of the existing State Corporations and which has in some cases cut across classifications.



Reclassification and Inventory of Government Owned Entities

Item	Number
Commercial State Corporations	34
Commercial State Corporations with Strategic Functions	21
Executive Agencies	62
Independent Regulatory Agencies	25
Research Institutions, Public Universities, Tertiary Education and Training Institutions	45
Total Inventory of GOEs as of 9 October 2013	187

The resultant reorganisation reduced the number of entities classified as GOEs to 187, representing a 28% reduction. The caveat is that this excludes any GOEs in existence, which could not be ascertained by the Taskforce at the time of completion of its work.

c. *A Clean and Updated Inventory of Government Owned Entities*

This report also provides an updated list of Government Owned Entities as at 14 September 2013, which is inclusive of all subsidiaries.

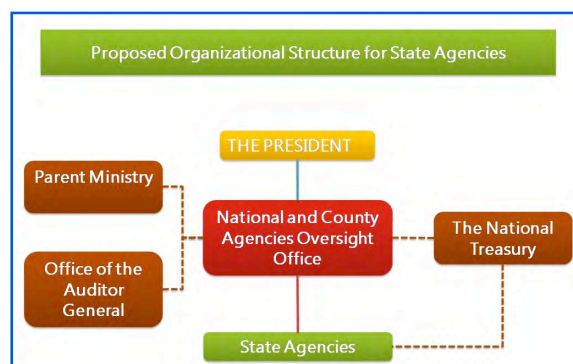


The fluid and ambiguous definition of State Corporations coupled with failure by responsible persons within government to adhere to the process of establishing these entities over the years led to a proliferation of State Corporations. It became necessary to review and rationalize Government Owned Entities with a view to consolidate functions and remove overlaps and duplications.

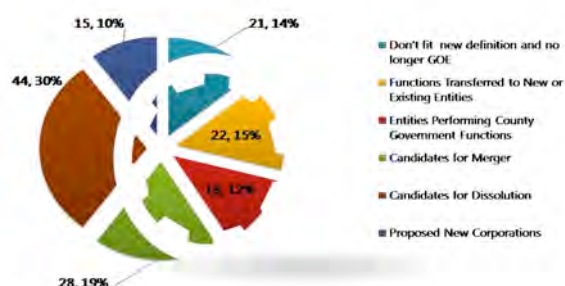
The purpose and rationale of this consolidation, rationalisation and therefore

reorganisation will be to:

- increase efficiency and effectiveness;
- rationalize areas of overlapping mandates;
- improve service delivery;
- enhance the ability of public agencies to meet their core regulatory and



Bird's Eye View of the Resultant Reorganization of GOEs



developmental mandates; and

- maximize the contribution to sectoral and national development goals under Kenya Vision 2030.

To satisfy this objective, Government Owned Entities were examined within ministries and sectors where they are domiciled and it resulted in recommendations for merger, dissolution, transfers to county governments and reversions to relevant state departments. While significant progress was made, the Taskforce was unable to conclusively ascertain the number of GOEs. A more comprehensive exercise will need to be undertaken leading to a final audited and approved inventory.

AUTHORITY FOR ESTABLISHMENT / DISOLUTION OF GOVERNMENT OWNED ENTITIES

Establishment of Government Investment Company (GIC)

Shall be incorporated by the Treasury under the Companies Act

Establishment of State Corporations

GIC shall establish by incorporating such under the Companies Act

Establishment of NACAOO

It will be established by the President as an independent office in terms of Article 132(4)(a) of the Constitution of Kenya, 2010

Establishment of State Agencies

The relevant sector Ministry shall develop rationale and feasibility, in consultation with the National Treasury after which it will be presented for appraisal by NACAOO prior to presentation to Cabinet for consideration and approval. The President may then through legal notice establish the State Agency

Establishment of County Corporations and Agencies

The relevant sector Department shall develop rationale and feasibility, in consultation with the County Treasury, after which it will be presented to the County Executive for consideration and approval based on standards developed by NACAOO. The Governor may then through legal notice establish either the County Corporation or County Agency

d. *Clarity in the Institutional Arrangement of Government Entities*

The existing institutional arrangement created an environment where SCs had multiple reporting centres, which would at times provide conflicting policy direction, with resultant negative consequences in performance. To cure this state of affairs, the Taskforce has recommended that there should be a clear distinction between commercial and non-commercial functions in government owned entities. Where non-commercial activities are embedded in the activities of a commercial, but strategic state corporation, this will be treated as public service obligations and funding adequately provided to cover the same. In addition, there should a clear separation between policy, regulatory and service delivery functions for the GOEs. The fusing of regulatory and sector development functions was considered appropriate and should be considered on a sector-by-sector basis.

The Taskforce also recommends that all agencies designated to exercise ownership will ensure that prior approval is obtained from relevant authorities prior to:

- The establishment or participation in the establishment of a company;
- Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- Acquisition or disposal of a significant shareholding in a GOE;
- Acquisition or disposal of a significant asset;
- Commencement or cessation of a significant business activity; and
- A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

Further, the Taskforce recommends that the Government implement a ***Centralized Ownership and Oversight Model*** of all GOEs. At the national level, the ownership of all State Corporations and agencies will remain with the National Treasury as per the constitutional mandate. The shareholding role for commercial entities shall however be exercised directly by the National Treasury through a Holding Company, the Government Investment Corporation (GIC), which the National Treasury shall incorporate under the Companies Act.

At the County level, ownership of all County Corporations and Agencies will remain with the County Treasury as per the Constitution of Kenya, 2010 and the County Governments Act. Exclusive oversight will be exercised for Kenya's Government Owned Entities as follows:

- Government Investment Corporation (GIC) by the President;
- National and County Agencies Oversight Office (NACAOO) by the President;
- State Corporations by the Government Investment Corporation;
- State Agencies by NACAOO
- County Corporations & Agencies by County Executive on the basis of guidelines and standards/norms provided by NACAOO

KENYAN SOVEREIGN WEALTH FUND TO BE BASED ON THE SANTIAGO PRINCIPLES

These set of twenty-four principles' have as their main objective the provision of guidance for SWFs, ensuring that investment decisions are based on economic and financial risk return-related considerations, unless publicly declared otherwise. The publication and implementation of these principles should foster the understanding of SWFs as financially and economically oriented entities, contributing to the stability of the global financial system, reducing protectionist pressures, and helping maintain an open and stable investment climate. Currently, twenty-five countries have signed up to these principles

The Office of the Auditor General (OAG) shall provide statutory audit to all the above institutions save for the fact that in the case of State Corporations and County Corporations OAG may delegate the same to private audit for purposes of expediting the audit process.

e. Establishment of Sovereign Wealth Funds

The primary goal for establishing Kenya's Sovereign Wealth Fund is to achieve the policy objective of securing income from

current resources for future generations. On-going developments in the Oil, Gas and Minerals sector requires forward thinking in respect of policy. The need for a fund to support local communities, roll out local renewable energy schemes; fund restoration and rehabilitation of excavated areas; support Government savings from mineral revenues to ensure sustainable and stable future incomes; ease economic stress through stabilization; strengthen the nation's long term financial position; and finance expenditure on public pensions becomes important.

Additional objectives for Kenya's Sovereign Wealth Fund will include supporting the fiscal budget through transfers to National Government budgets (with approval of Parliament) from Sovereign Wealth Fund investments (domestic and international).

These objectives are expected to change over time with the onset of sustained exploitation and production of natural resources from recent discoveries in Oil and Gas, Coal, Titanium, Soda Ash, Rare Earth Elements (REE) and other natural resources endowments. ***In this respect, the Taskforce Report recommends the creation of a Sovereign Wealth Fund, which shall be established by an Act of Parliament.***

f. Rationalized Legal Framework

The Taskforce Report recommends the enactment of a single overarching law, the ***Government Owned Entities Bill 2013***, governing national government owned entities as well as County Corporations and Agencies. The overarching legal framework would apply to GOEs in addition but not in substitution to other sector specific laws including the Capital Markets Act, The Banking Act, and the Companies Act. It will supersede all current legislation governing SCs on matters of governance and include all subsidiaries of Government Owned Entities (GOEs).

It will repeal all individual enabling legislations and recognize the unique characteristics of national State Corporations, national State Agencies, County Corporations, and County Agencies. The Act will provide for an institutional framework that promotes accountability, good corporate governance, and results orientation without stifling operational autonomy while operating within the requirements of the Constitution. The proposed legislation will address the duplication, conflicting provisions, different founding legislation, and sometimes-serious omissions.

g. Strengthening Corporate Governance

In order to strengthen corporate governance, the Government Investment Corporation will exercise ownership, investment and oversight roles for all State Corporations on behalf of the National Government. All State Corporations shall have a governance framework hinged on the holding company to be incorporated by the National Treasury and known as Government Investment Corporation (GIC).

It is also recommended that the sizes of the Boards of Directors of the GIC and the State Corporations shall be restricted to between seven (7) and nine (9) members including a non-Executive Chairperson. The Chairperson of the Board of GIC and members thereof shall be appointed by the President and shall include the Principal Secretary to the National Treasury who shall be appointed at all times by name with no provision for alternate representation.

In respect of State Corporations, the Board of GIC shall appoint the Chairperson and members of the Boards.

The authority to appoint the Chief Executive and top management shall be exclusively vested in the board of directors. In this connection, the recruitment process will be done openly and competitively within a framework developed by GIC and in accordance with the Constitution. In execution of its mandate, the Board of Directors of State Corporations will be responsible for determining staffing levels, terms and conditions of service and other staff policy related matters within guidelines developed by GIC.

The remuneration policy and structure for Board members and staff of SCs shall be regulated by GIC taking account of prevailing market conditions and in compliance with the constitution. GIC will also develop guidelines for award of incentives and rewards for exceptional performance in SCs. In the case of GIC, the President shall, with advice from the Salary Review Commission, provide guidelines upon which the Board of GIC shall determine remuneration of Board members and staff of the corporation.

All Board members are to serve for a three-year term renewable once. Membership to the Boards of State Agencies by Government Ministries/Departments is to be restricted to two members, one each from the National Treasury and the parent Ministry. The two shall be either the Principal Secretary or their nominees who shall be substantively appointed as members of the Board by the Cabinet Secretary of the relevant parent Ministry of the State Agency.

Chief Executive Officers will be appointed to four-year terms renewable once based on performance determined through transparent evaluation processes. The position of a Chief Executive Officer shall only be advertised where the Board of Directors in consultation with GIC consider reappointment undesirable based on poor performance or gross misconduct.

The Taskforce recommends that an appropriate mix of skills for Board of Directors of the GIC and SCs be sought at all times across all functionalities of the board. In addition, a qualified Company Secretary, being a member of the Institute of Certified Public Secretaries of Kenya and in good standing should serve as the Board Secretary. Boards of State Corporations must define the skills and competences required at any one time and to maintain a matrix of skills and competences required to guide future recruitment.

In order to ensure that SCs effectively compete with their private sector peers, it is recommended that the public procurement and disposal of goods and services framework be reviewed to free SCs from any unnecessary encumbrances', while retaining fidelity to the Constitution of Kenya 2010.

A Uniform Code of Governance and Leadership will be developed to provide a firm foundation for good corporate governance and be applicable across all GOEs. It will be based on the Constitution of Kenya 2010 including Articles 10 and 232. It should adopt the King III

Report on Corporate Governance (as modified by OECD guidelines) and the toolkit should comprise a:

- Code of Best Practice
- Board Charter
- Code of Conduct and Professional Ethics
- Board Work Plan
- Performance Evaluation Mechanism

The Uniform Code of Governance and Leadership shall be subjected to stakeholder consultation before adoption. The Government Investment Corporation (GIC) and the National and County Agencies Oversight Office (NACAOO) will ensure that the code of governance is ready for approval by the Cabinet in the very short term. Listed SCs will adhere to the requirements of the Capital Markets Authority in this regard.

h. Performance Management Framework

To facilitate a strong customer/client orientation in service delivery and drive performance to the next level, it is recommended that:

- i. All GOEs be required to operate within the performance-contracting framework if the gains already realised are to be enhanced.
- ii. The GIC, NACAOO and the Vision Delivery Secretariat (VDS) will develop a performance management instrument focused on the National Key Result Areas (NKRA's) and prescribed sector performance standards. Using the mission analysis approach, the instrument will prescribe the cascading mechanism at all levels and the performance collaboration relationship across the sector value chain. The instrument will also provide for intermediate variables that are measurable and are linked to the outcomes for the GOE.
- iii. The State Agencies will have a defined linkage between their service charter and the performance contracts linked to their Key Result Areas (KRA's).
- iv. The contracting principal will provide goals and set targets linked on the national goals. Such goals will include specific outputs and outcomes in the employment contracts of the corporation's CEO and management.
- v. Rewards and sanctions will be clearly determined by the contracting principals and linked to service contracts of the CEOs and managers of the GOEs.
- vi. Beyond ranking, performance management will be used to analyse the outputs of the GOEs year on year focusing on the bottom line for State Corporations and on Key Result Areas (KRA's) for State Agencies, County Corporations and County Agencies. Performance analysis will be done by the governing body (GIC & NACAOO) providing a sector based dashboard on GOE performance.
- vii. Each GOE's performance will be benchmarked against ***a Domestic Reference Group*** and ***an International Reference Group***. In addition, the oversight bodies will develop and operationalise a GOE Corporate Governance Rating Index:
- viii. For all GOEs, the performance contracting cycle will be aligned to that of budgeting so that national priorities, policies and programmes are determined before the negotiation of performance contracts.
- ix. The performance management system will be anchored in the overarching law
- x. The performance contracting and evaluation framework shall be exercised by contracting principals and evaluators as shown in Box 1.

Box 1: Proposed Performance Management Framework

Agency	Contracting Principal & Evaluator
Government Investment Corporation (GIC)	President
State Corporations	GIC
NACAOO	President
State Agencies	Cabinet Secretaries
County Corporations	Governor
County Agencies	County Department Executive

i. Alignment with the National Development Agenda

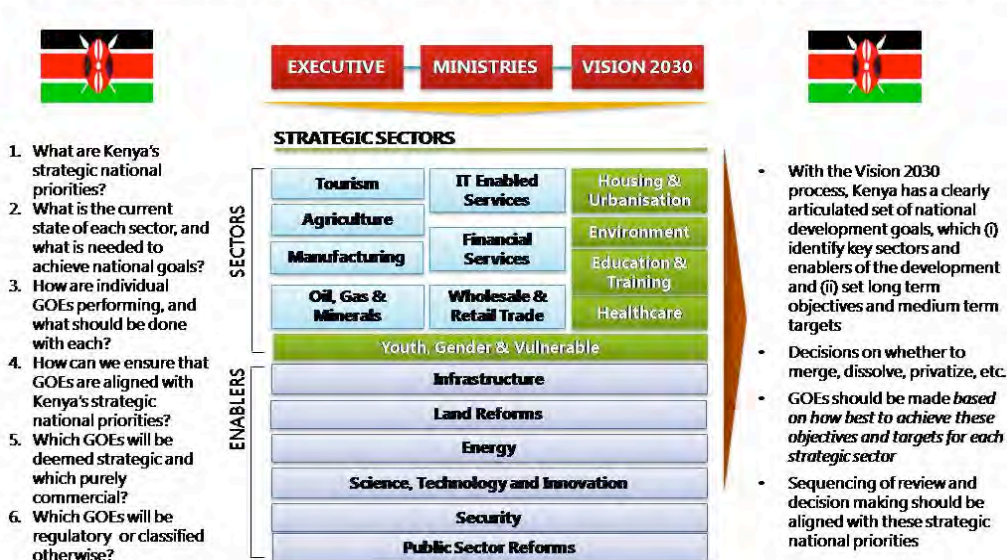
In order to ensure alignment of GOE activities with the national development agenda, the Taskforce recommends that the Government, in collaboration with all stakeholders actively drive the effort to ensure that there is a shared understanding of and commitment to the national development agenda as well as the expected role of the government owned entities in driving the agenda. This will facilitate faster and cost effective execution of the strategic interventions expected under Kenya Vision 2030. This will drive the process of keeping under continuous review the mandates and operational agendas of the various GOEs.

Further, proactive steps should be taken to build the capacity to develop and continuously review overarching strategies in respect of GOEs by adequately capacitating the responsible institutions, ensuring adequate collaboration between these entities and similar ones in benchmarked countries and with international bodies, and targeting capacity and capability development at the national and county levels.

As far as is possible, there should be active efforts to grow the value of existing assets before disposal. The functions of the Privatization Commission will thus be transferred to the GIC. The current privatization programme will thus be referred to the GIC which will determine how best to proceed. In addition, the proposed Government Investment Corporation will be empowered to make Government investment decisions on a portfolio basis and to hold the government shares in all Government Linked Companies.

The Taskforce further recommends that the Government undertake a comprehensive review of the human capacity and capability gaps in all government owned entities, based on the minimum criteria and qualifications proposed in this report, and develop customized programmes to ramp up these capabilities, starting with those entities in the strategic sectors to the economy.

Linking Government Owned Entities to the National Development Agenda



Critically, it is also recommended that the financial decision making capacity in the entities having oversight over government owned entities be strengthened, focusing on their ability to oversee application of public private partnerships, dealing with unfunded mandates as well as addressing alternative funding arrangements.

j. Transitional Provisions

i. Incorporation of GIC

Upon adoption of The Policy by Government, the National Treasury will immediately incorporate GIC. Thereafter the National Treasury shall transfer its ownership role in all State Corporations and Government Linked Corporations to the GIC. All Assets and Liabilities of the current Privatization Commission shall be assumed to be Assets and Liabilities of GIC. However, staff of the commission shall only be absorbed by GIC subject to suitability.

ii. Establishment of NACAOO

Upon adoption of the Policy by Government, the President will establish NACAOO as an office in the Public Service. All Assets and Liabilities currently managed under the State Corporations Advisory Committee and the Inspectorate of State Corporations shall be deemed to be Assets and liabilities of NACAOO. However, staff of the two institutions shall remain Employees of the Civil Service Pending suitability assessment to join NACAOO

iii. Merger of State Agencies

A number of existing State Agencies have been merged. Upon commencement of the Government Owned Entities Act, the respective Cabinet Secretary shall, in liaison with NACAOO, operationalise the merged State Agencies by:

- causing a legal notice to be issued by the President establishing the new Government Owned Entity arising from the merger
- having a Board of Directors for the new GOE appointed
- dissolving the previous Boards of the merged State Agencies and revoking any appointments thereof
- integrating the merged State Agencies as Directorates of the new Government Owned Entity.
- repealing or amending the enabling legislations of the merged State Agencies

iv. Chief Executive Officers' of Merged State Agencies

The Chief Executive Officers' of the State Agencies to be merged shall move to the new Government Owned Entity as Heads of their Directorates (former State Agency). They will however be only allowed to serve for their unexpired term subject to a maximum period of six (6) months. Thereafter, their contracts shall be determined.

v. Staff Serving in Merged State Agencies

All the staff serving in State Agencies being merged shall be presumed to be staff of the new GOE. The Board of the new GOE and the respective Cabinet Secretary shall, in consultation with NACAOO, undertake staff placement in the developed organizational and staff establishment structures. Any staff found not fitting in the establishment structure may be redeployed elsewhere in the public service or be off-loaded in the normal manner.

vi. Boards of Retained State Agencies

The serving Directors/Board members of retained State Agencies shall be retained to serve:

- for the remainder of the unexpired term if they fully meet the minimum qualifications for Board members of GOEs spelt out in the policy and have served for not more than two terms.
- their unexpired term upto a maximum period of three (3) months in case they don't fully meet the requirements for Board members stipulated in the policy or in cases where the Director/Board member has served for more than two terms.

vii. Chief Executive Officers of Retained State Agencies

Chief Executive Officers of State Agencies to be retained shall be:-

- allowed to serve the unexpired term subject to performance and fully meeting the requirements for appointment to CEOs as stipulated in the policy.
- allowed to serve the unexpired term upto a maximum period of six months in cases where the requirements for appointment to CEOs as stipulated in the policy are not fully met or if their performance is assessed to be below par.

No new contract of service shall be offered to a CEO who has served in the same State Agency for two terms.

viii. State Agencies with Functions to Ministries

All staff's serving in State Agencies whose functions have been transferred to Ministries shall be deemed to be transferred to the Public Service Commission for appropriate deployment or otherwise.

The enabling legislations of the State Agencies whose functions have been transferred to Ministries shall be repealed.

ix. State Agencies Whose Functions Have Been Devolved

The policy has recommended discussions between the National Government and County Governments regarding the future of the State Agencies whose functions have been devolved. It is expected that those discussions will herald appropriate decisions on the way forward for those Agencies.

x. State Corporations

GIC, once incorporated by the National Treasury and operationalized, will determine the management and operational issues in the State Corporations

xi. New State Agencies

New Government Owned Entities have been created by the policy. Upon enactment of the GOE Act, the respective Cabinet Secretary shall, in consultation with NACAOO, develop necessary legal instruments (Legal Notices) for gazettment by the President.

xii. Implementation of the Policy Recommendations

Implementation of the various policy provisions shall be systematically sequenced and undertaken in an accountable manner as reflected in the implementation matrix in Chapter 12.

Conclusion

These recommendations will facilitate the repositioning, rationalisation, and consolidation of Government Owned Entities in a manner that will ensure that they are aligned to the national development agenda. In addition, by driving a focus on responsive service delivery supported by strengthened corporate governance, these measures will unlock the value inherent in Government Owned Entities, by increasing the wealth generated by these entities, but also addressing critical social needs supportive for a sustainable wealth creation process. In this manner, the Taskforce report exports stronger and better performing GOEs, acutely attuned to strengthening their contribution to the transformation of the Kenyan nation and hasten achievement of Kenya Vision 2030.

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List of Acronyms

BD	Board of Directors
BPO	Business Process outsourcing
CBK	Central Bank of Kenya
CE	County Executive
CEO	Chief executive Officer
CEOs	Chief Executive Officers
CMA	Capital Markets Authority
CoK 2010	Constitution of Kenya 2010
CPSB	County Public Service Board
CS	Cabinet Secretary
DGIPE	Department of Government Investments and Public Enterprises
EMU	Efficiency Monitoring Unit
ERC	Energy Regulatory Commission
GDC	Geothermal Development Corporation
GIC	Government Investment Corporation
GOE	Government Owned Entity
GOEs	Government Owned Entities
GoK	Government of Kenya
HELB	Higher Education Loans Board
ICT	Information Communication Technology
IDB	Industrial Development Bank
IPA	Investment Promotion Agency
IPAs	Investment Promotion Agencies
ISC	Inspectorate of State Corporations
KEBS	Kenya Bureau of Standards
KEDB	Kenya Economic Development Board
KEMRI	Kenya Medical Research Institute
KEMSA	Kenya Medical Supplies Agency
KENAO	Kenya National Audit Office
KeNHA	Kenya National Highways Authority
KeTRACO	Kenya Electricity Transmission Company
KIE	Kenya Industrial Estates Limited
KNH	Kenyatta National Hospital
KNLS	Kenya National Library Services
KNTC	Kenya National Trading Corporation

NACAOO	National and County Agencies Oversight Office
NCPB	National Cereals and Produce Board
NEMA	National Environment Management Authority
NMC	Numerical Machining Complex
NSE	Nairobi Stock Exchange
NT	The National Treasury
OAG	The Office of the Auditor General
PC	Performance Contracting
PPOA	Public Procurement Oversight Authority
PPP	Public Private Partnership
PS	Principal Secretary
PSC	Performance Contracting Secretariat
R&D	Research and Development
SA	State Agency
SAGAS	Semi-Autonomous Government Agencies
SAs	State Agencies
SC	State Corporation
SCAC	State Corporations Advisory Committee
SCs	State Corporations
SoE	State Owned Enterprise
SoEs	State Owned Enterprises
SP	Sessional Paper
SRC	Salaries and Remuneration Commission
SWF	Sovereign Wealth Fund
SWFs	Sovereign Wealth Funds
VDS	Vision Delivery Secretariat

PART 1: INTRODUCTION

CHAPTER ONE

THE TERMS OF REFERENCE AND THEIR INTERPRETATION

Preamble

Kenya is ripe with promise, although beset by significant development challenges, including sub-optimal growth, poverty, and a fickle global economic environment amongst others. The country has a formidable critical mass of well-educated young people with the nimblest, most innovative minds anywhere on the continent, and our economic growth continues to offer much hope. We now have the capacity and means to exploit our natural resources and economic potential under a governance framework that guarantees equity and equality. It also facilitates unlocking of the potential inherent in parastatals. The Jubilee Administration expects to deliver on this promise as it addresses the many challenges facing the nation.

Parastatals in Kenya today are saddled with a wide range of objectives. They perform diverse functions spanning manufacturing and commerce, financial intermediation and infrastructure development through service provision, regional development, environmental conservation to education and training as well as regulation of the economy. They must serve the needs of industry; provide secure employment; boost citizen participation in the economy; help government to implement and learn from implementation of industrial policy; and reduce inequalities in access to water, sanitation and electricity. They represent a critical cog in the machinery being set up to enhance public service productivity to support sustainable growth, combat social exclusion and improvement in the citizen's quality of life. In this respect, parastatals need to operate effectively and in the public interest over the medium and long term. Concerns have been raised whether existing governance structures are adequate to develop long-term strategies for meeting these multiple obligations.

The challenge is to identify better ways of working so that the multiple and competing priorities can be balanced against each other more effectively in practice. This will ensure that parastatals are marshalled to play their role in making Kenya a great land of prosperity and opportunity for all. They have the undeniable potential to support the realization of Kenya Vision 2030. In this regard, they need clear policy direction, governance and management to function properly.

The Terms of Reference

On 23rd July 2013, H.E. President Uhuru Kenyatta appointed a Taskforce with a mandate to conclude the on-going policy review on parastatals with the aim of addressing the sectoral challenges while achieving Government policy, including, the most appropriate institutional arrangement for the sector taking into account:

1. The new Constitution and particularly devolution and the mandate of the Salaries and Remuneration Commission (SRC);
 - a. Administrative, Governance, Managerial and Audit needs;
 - b. The many categories, types and sizes of institutions in the sector; and
 - c. The relevance, viability and duplication of mandates

2. A Clear mechanism for the Public Policy Direction of the sector aimed at achieving desired national goals in the administration and management of the economy without hampering or degrading the commercial mandates or regulatory independence of the respective institutions.
3. An audit of the human resource with the aim of getting qualified and capable people in the boards and senior management levels with a specific bias to women, youth and other special categories of Kenyans

The mandate required the taskforce to undertake the following as its Terms of Reference (TOR), namely to:

- a. Review the draft policy on State and County Corporations;
- b. Review the inventory of State Corporations including establishment and classify them by function and scope of operation in terms of regional coverage;
- c. Consider and recommend general institutional arrangement for all State corporations;
- d. Articulate and recommend appropriate policy, administrative and governance framework for different categories of State corporations in accordance with their functions and operational requirements;
- e. Examine mandates and functions of existing State Corporations to confirm relevance and address issues of duplication and waste;
- f. Examine and recommend the appropriate mechanisms for ensuring operations of State corporations are geared to delivery of specified national development goals;
- g. Make recommendations for appropriate institutional arrangements for a sovereign wealth fund;
- h. Review qualifications, knowledge and experience of all Chairmen and Board members of State Corporations including gender and age, and recommend retention or replacement, taking into account legal requirements for replacement of directors;
- i. Review recruitment and appointment policies and practices for purposes of mainstreaming gender, youth and other minority requirements;
- j. Identify functions previously performed by State Corporations on behalf of National Government but assigned to the county governments at Schedule Four (4) of the Constitution of Kenya, 2010;
- k. Recommend how State Corporations performing functions of the National Government will interface with county governments;
- l. Make recommendations on an appropriate Strategic Government Investment Framework; and
- m. Make recommendations on the type or types of Sovereign Wealth Fund/s Kenya should adopt and the elements of the required policy, legal and regulatory framework in the context of the Constitution of Kenya 2010.

Taskforces Interpretation of the Terms of Reference

The State Corporations Advisory Committee (SCAC) had over the past eighteen month's undertaken work on the reform of state corporations and prepared a Draft Policy on the Management of State Corporations in Kenya. Building on this work, the Presidential Taskforce on Parastatal Reforms (PTPR) reviewed its assigned Terms of Reference and it was the consensus that the mandate entailed:

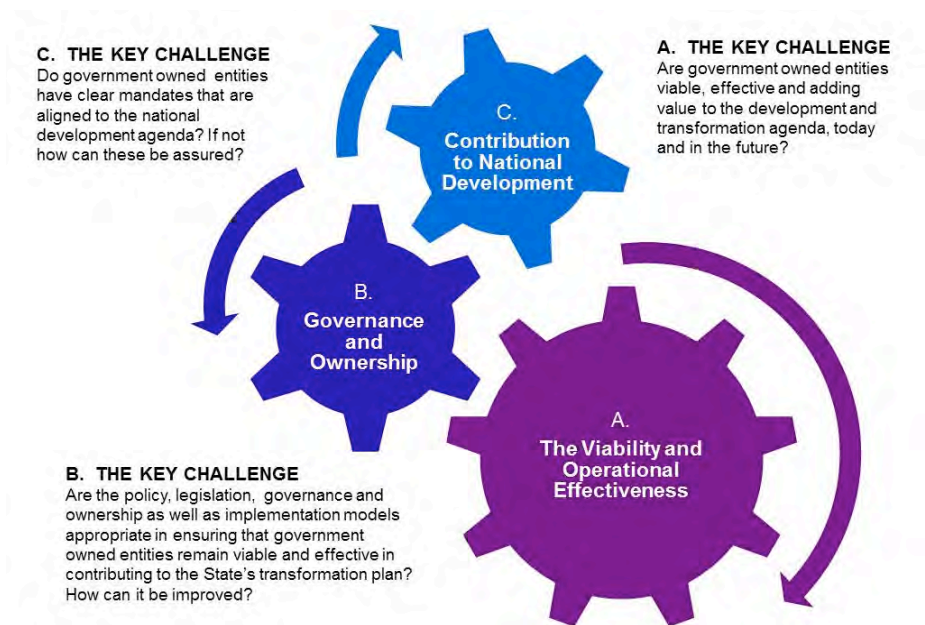
- a. Reviewing the performance of the parastatal sector vis a vis their expected and potential contribution to the national development agenda;
- b. Elaborating on a process for demarcating areas of engagement as strategic for the national development agenda;
- c. Identify the factors facilitating or inhibiting their performance;
- d. Auditing the status of the human resource in the sector;
- e. Achieving clarity in the definition of state corporations in Kenya in line with global best practice;
- f. Providing a clear and comprehensive inventory of parastatals in Kenya at the time of the review;
- g. Reviewing the mandates of the parastatals;
- h. Defining a classification framework for parastatals in Kenya and classifying the current entities using this framework;
- i. Developing a clear mechanism for establishing and disestablishing state corporations;
- j. Reviewing the composition of Boards with the view to determining options of ensuring that they are competent and representative in terms of the imperatives of the Constitution of Kenya 2010; and
- k. Recommending interface mechanisms between state corporations performing national government functions and county governments.

In dealing with the mandate assigned to it, the PTPRs addressed itself to all the entities classified as parastatals or state corporations in Kenya.

Key Questions / Issues for the Taskforce

The key questions that guided the work of the PTPR revolved around the viability and operational effectiveness of GOES; their governance and ownership as well as their contribution to the national development agenda as illustrated in Chart 1.1.

Chart 1.1: The Government Owned Entities Performance Challenge



Source: Adapted from the PRC Volume 2 Report, p 17

Engagement Approach of the Taskforce

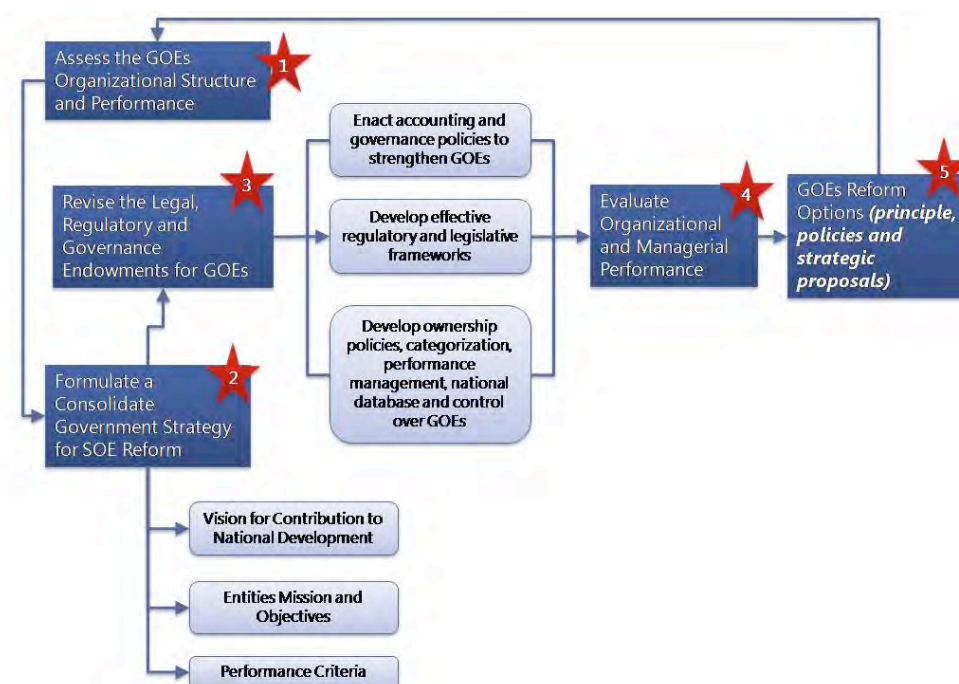
General Work Approach on the Thematic Areas

The timing of the taskforce's work was clearly supportive of the national government's agenda for the period 2013-2017, themed *Transforming Kenya: Pathways to Devolution, Socio-economic Development, Equity and National Unity*. A review of global initiatives aimed at transforming the performance of government owned entities showed great similarities, nuanced by the specific challenges of each country in question.

Chart 1.1 documents the three pillars defining the challenge exemplified by government owned entities. These pillars define the key issues that exercised the efforts of the taskforce. The United Nations in their report titled, "Public Enterprises: Unresolved Challenges and New Opportunities", argued that

"in any country seeking to reform public enterprises, strategy formulation should be preceded by an assessment of the performance of the public enterprise sector carried out by a government commission or agency that can identify SOE objectives, assets, and resources; assess their financial assets and liabilities; evaluate their performance in meeting their objectives; and demonstrate their contribution to economic and social development."

Chart 1.2: International Best Practice for GOE Review and Transformation



Source: Adapted from United Nations, 2008

This report suggests a structure, illustrated in Chart 1.2, which generally describes the approach adopted by the PTPRs as informed by the broad review of literature in this area.

Identified Thematic Work Areas

Applying this best practice to the terms of reference assigned to the taskforce, three working groups were established to carry out the work as described in Table 1.1. As illustrated in Chart 1.3, the effort around these thematic areas was expected to yield a common understanding of the definition of Government Owned Entities (GOEs); an updated and reorganized inventory of GOEs; a new definition of GOEs; and a revised classification of GOEs.

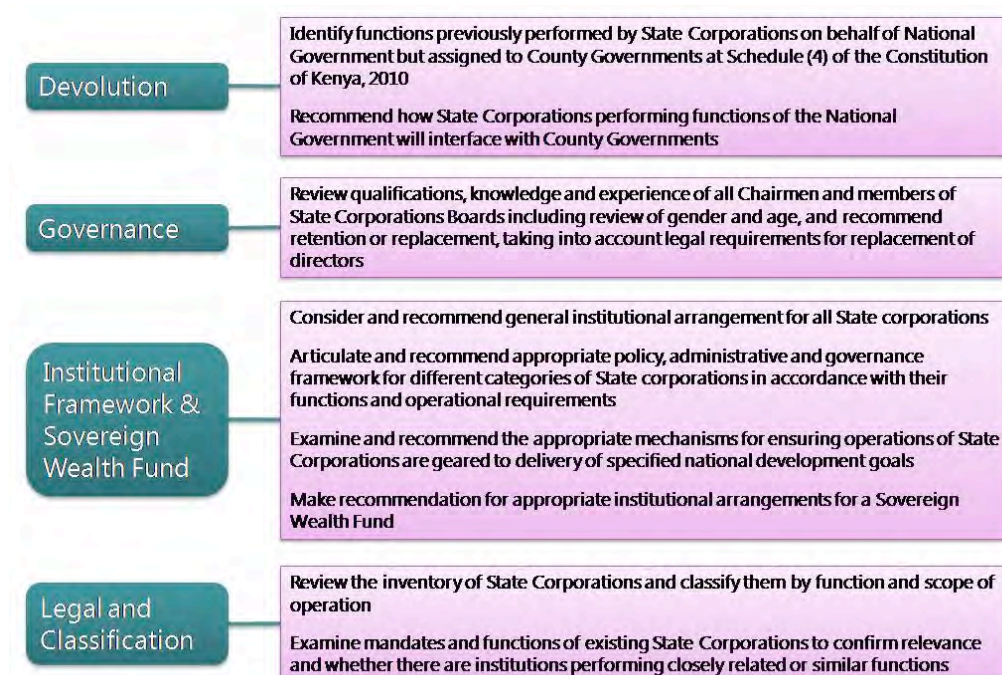
Table 1.1: Working Groups, Issues and Expected Outputs

Thematic Areas	Terms of Reference	Issues Under Terms of Reference	Outputs
Group 1 LEGAL MANDATE CLASSIFICATION AND DEVOLUTION	(ii) Review the inventory of State Corporations and classify them by function and scope of operation	<ol style="list-style-type: none"> 1. Definition of State & County Corporations 2. Present actual inventory & categorization 3. Review proposed classification and justification 4. Fit SCs in the proposed classification 5. Scope of operation (regional coverage) 	<ol style="list-style-type: none"> 1. Clear definition of State & County Corporations 2. Confirmed Inventory of SCs 3. Propose Classification & list of SC therein
	(v) Examine mandates and functions of existing State Corporations to confirm relevance and whether there are institutions performing closely related or similar functions	<ol style="list-style-type: none"> 1. In accordance with article 43 of the constitution identify specific national development goals (Vision 2030/Jubilee Manifesto/Mid-Term Plan/Millennium Development Goals) 2. Examine current mandates 3. Identify duplication and overlaps 4. Identify obsolete mandates 5. Identify poor performers (using the PC framework?) 6. Propose candidates for amalgamation or dissolution 7. Enhance mandates of existing State Corporations where necessary 	<ol style="list-style-type: none"> 1. Map/matrix of mandates of all SCs to specific national development goals
DEVOLUTION	(ix) Identify functions previously performed by State Corporations on behalf of National Government but assigned to County Governments at Schedule (4) of the Constitution of Kenya, 2010.	<ol style="list-style-type: none"> 1. Identify functions- refer to schedule 4 of the Constitution 2. Identify State Corporations concerned 3. Develop mechanisms for devolving the functions assigned to County governments but currently being performed by State Corporations 	<ol style="list-style-type: none"> 1. Matrix of functions currently performed by SCs which have been devolved to counties, and shared functions. 2. Mechanisms for devolving
	(x) Recommend how State Corporations performing functions of the National Government will interface with County Governments	<ol style="list-style-type: none"> 3. Identify interface between State Corporations & the counties in which they are domiciled <ol style="list-style-type: none"> a. Legal b. Environmental 4. Provide national policy & standards for implementation by County government 	<ol style="list-style-type: none"> 1. Matrix of interface between SCs and Counties 2. Mechanism for facilitating interrelation between SCs and Counties 3. Recommended way forward in development of National policy & standards for implementation by County government
Group 2 INSTITUTIONAL FRAMEWORK & SOVEREIGN WEALTH FUND	(iii) Consider and recommend general institutional arrangement for all State corporations	<ol style="list-style-type: none"> 1. Review current status under the State Corporations Act 2. Challenges in the current institutional framework 3. Review lessons learnt from global best practices 4. Interrogate the framework proposed in the draft policy & Bill in regard to the following classification; <ol style="list-style-type: none"> a. State Owned Enterprises b. Executive agencies c. Public Universities & Tertiary Education Institutions d. Research Institutions e. Referral Hospitals f. Regulatory bodies 	<ol style="list-style-type: none"> 1. Identified challenges in the current institutional framework 2. Documented best practices 3. Recommended appropriate institutional framework
	(iv) Articulate and recommend appropriate policy, administrative and governance framework for different categories of State corporations	<ol style="list-style-type: none"> 1. interrogate the proposed institutional administrative framework <ol style="list-style-type: none"> a. NAHC b. SCCOA 	

Thematic Areas	Terms of Reference	Issues Under Terms of Reference	Outputs
	in accordance with their functions and operational requirements	2. Review the proposed role of the Presidency, County Executive, the National Assembly, the Cabinet, the National Treasury, County Treasury, responsible Cabinet Secretary, responsible Principal Secretary & Board of Management, SRC & PSC in management of SC	
	(vi) Examine and recommend the appropriate mechanisms for ensuring operations of State Corporations are geared to delivery of specified national development goals	<ol style="list-style-type: none"> Interrogate current status <ol style="list-style-type: none"> The link between National Planning Framework, strategic planning & execution Performance contracting obligations Assess Institutional & Human Resource Capacity Review regulatory environment Procurement 	<ol style="list-style-type: none"> Reviewed Performance Management Framework Documented gaps in institutional capacity & specialized skills (focus on flagship projects) Documented challenges within the regulatory environment & way forward
SOVEREIGN WEALTH FUND	(vi) Make recommendation for appropriate institutional arrangements for a Sovereign Wealth Fund	<ol style="list-style-type: none"> Make recommendations for appropriate institutional arrangements for a Sovereign Wealth Fund Present on global best practices Propose institutional arrangements 	<ol style="list-style-type: none"> Recommended institutional structure for establishment of Sovereign Wealth Fund Recommended regulatory framework
		<ol style="list-style-type: none"> Review existing investment policy with a view to enhancing government participation Review the existing divestiture policy with a view to regaining the ownership of strategic investment 	<ol style="list-style-type: none"> Advisory opinion on the efficacy of the current investment & divestment policies Identified strategic functions and SCs in which more government investment is required. Identified SCs from which the government should divest
Group 3 GOVERNANCE	(viii) Review qualifications, knowledge and experience of all Chairmen and members of State Corporations Boards including review of gender and age, and recommend retention or replacement, taking into account legal requirements for replacement of directors	<ol style="list-style-type: none"> Interrogate current framework of appointment & removal from office of Chairperson, directors & CEOs Review proposed framework for appointment & removal from office of Chairperson, directors & CEOs Review governance practices and best practices including Code of Governance (King III principles as modified in accordance with OECD guidelines for management of State Owned Enterprises & Kenyan context) 	<ol style="list-style-type: none"> Clear criteria for appointment of Chairmen, Board members & CEOs <ul style="list-style-type: none"> Qualifications Experience Age Mix of skills Constitutional requirements Clear criteria for retention/replacement of Chairperson, directors & CEOs Current inventory of profiles of all Chairmen, Board members & CEOs of SCs Identified vacancies in Boards Recommended way forward in the development of a code of governance for SCs

In addition a new list of reorganized GOEs; institutional frameworks for different categories of GOEs; a framework for their establishment and dissolution; a framework for establishment of a Sovereign Wealth Fund; a Strategic Government Investment Framework as well as a reviewed Performance Management Framework for GOEs.

Chart 1.3: Engagement Thematic Areas



The PTPRs was also expected to review the place of GOEs in light of the Constitution of Kenya 2010 as well as a robust framework for cost effective and timely implementation of its recommendations.

Taskforce Limitations, Challenges, Disclaimers

The taskforce undertook its work in a very limited timeframe of six weeks. In this respect, in order to deal with some of the critical steps and to clearly incorporate inputs from other stakeholders it was necessary to delimit the scope of entities to be dealt with. For purposes of this assignment, it was necessary to limit the scope of work to focus only on those entities classified as parastatals and state corporations, whether they are commercial or non-commercial in their operations.

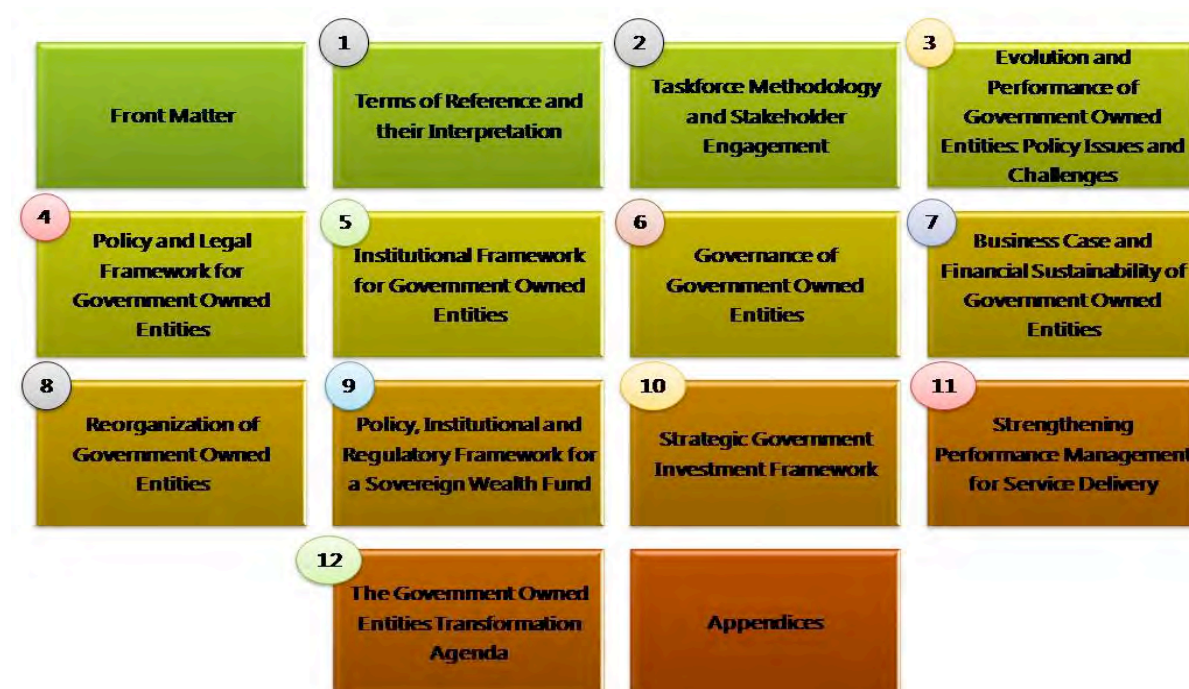
Statutory Boards and semi-autonomous government agencies do not form a component part of this assignment. The exception to this is where the operations of these entities have implications on the performance of state corporations. This is in terms of these entities being an avenue through which the processes of establishment of parastatals have been violated in the past. Conscious of this challenge, the PTPRs has provided direction on how this loophole should be addressed to avoid proliferation of GOEs as well as these entities.

Organization of the Report

In order to respond to the terms of reference and ensure coverage of the issues under consideration the report is organized into eleven (11) chapters, with a set of appendices as illustrated in Chart 1.6. Chapter one describes the terms of reference, their interpretation, their thematic areas of engagement, and the work processes as well documenting the feedback received from the various stakeholders. Chapter Two documents the methodology and the issues emerging from stakeholders. Chapter Three provides a summary of global good practice in respect of the position of Government Owned Entities (GOEs) in respect of national development efforts. It goes on to discuss the pillars that would support the growth

and sustenance of vibrant government owned entities that play the six critical roles assigned to them in a “developmental state”.

Chart 1.4: Organization of the Report



Chapter Four discusses the policy and legal framework, whilst Chapter Five discusses the institutional framework for the same. Chapter Six deals with governance issues; and Chapter Seven discusses the funding arrangements of the state owned entities. Chapter Eight discusses the reorganization of the various state owned entities into the different groups. Chapter Nine addresses the question of the sovereign wealth fund. Chapter Ten deals with the strategic government investment framework, while Chapter Eleven deals with performance management issues in government owned entities.

Chapter Twelve addresses the transformation agenda for government owned entities to meet their expected roles in the national development process in Kenya.

CHAPTER TWO

TASKFORCE METHODOLOGY AND STAKEHOLDER ENGAGEMENT

Specific Working Methods

The PTPRs undertook its work through review of literature, discussion meetings, specialist presentations, stakeholder submissions as well as report writing retreats. The literature reviewed was from a variety of sources, including the following:

- Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya
- Report and Recommendations of the Presidential Working by His Excellency The President, 1982 (The Philip Ndegwa Report)
- The Presidential Review Committee on Public Enterprises in South Africa

Further, brainstorming exercises were used to discuss all the recommendations proposed and arrive at a consensus on the issues arising from the terms of reference.

Stakeholder Views on the Government Owned Entities

Stakeholder views were solicited and reviewed in two waves one preceding and the other succeeding the Presidential Taskforce on Parastatal Reforms.

Views from Top Management of State Corporations in 2009

In 2009, the State Corporations Advisory Committee (SCAC) engaged with Chief Executive Officers, Chairpersons and Directors of State Corporations over a series of workshops at the Kenya Institute of Administration (now Kenya School of Government). The workshops were held from 16th January to 26th June 2009 and were attended by 1,115 participants. This was a Government supported initiative borne of the realization for a need reforms in governance of State Corporations and to solicit suggestions for change. The Programme was developed with the objectives to:

- introduce members to the environment in which State Corporations operate;
- articulate the relationship between State Corporations and their parent ministries and the various other Government institutions and agencies;
- review with them the role of oversight institutions; and
- review the functions; duties, responsibilities and liabilities of Boards of Directors and of individual directors; and
- articulate desirable change in the management of State Corporations.

The participants were concerned that:

- i. The economy was carrying too many State Corporations and that they continued being created without consultation as required under the State Corporations Act. Owing to lack of consultation State Corporations with overlapping and duplicating functions have been created, while others duplicated functions of Government ministries.
- ii. The heavy control and regulatory regime created by the State Corporations Act Cap. 446 and the Public Procurement and Disposal Act 2005 stifle operations and performance of State Corporations. The regime creates several oversight and

controlling agents whose functions overlap and obscure the role and responsibility of Board of Directors. Consequently, Boards are not sure when they are in control and what they control.

- iii. Permanent Secretaries/Accounting Officers in line Ministries have conflicting roles in the administration of State Corporations.
- iv. Appointments to Boards of Directors do not often take into account the right mix of skills required and integrity of persons appointed, and the need for staggered retirement of Board members and the need to retain corporate memory. Consequently we have ineffective Boards of Directors in some Corporations.
- v. Undue influences and patronage in the appointment of Board members and executive management has bred impunity, which in turn has affected performance. Boards are not fully in control of Chief Executive Officers and in some cases top managers are hired directly by the ministries. This renders the Board ineffective in demanding accountability from the management especially in this era of performance contracting.

In view of the challenges identified, the combination of Chief Executive Officers, Chairmen and Directors recommended a review of the legal, administrative and governance framework for State Corporations as summarised in Table 2.1. Appendix 1 provides the detailed responses and arising proposals from the consultations.

Table 2.1: Recommendations by Chairmen, Directors and Chief Executive Officers, January 16, to June 26, 2009

<ul style="list-style-type: none"> • Develop standard criteria and procedure for establishment of new State Corporations and procedure for restructuring, merger and/or dissolution of the existing State Corporations with a view to removing overlaps and duplication of functions, and abolish institutions whose mandates are no longer relevant. • Review the legal framework with a view to providing an enabling, business friendly environment for the Sector. • Develop a sharper classification of State Corporations and different regulatory frameworks for each class. • Review roles of Parent Ministries, the Treasury, the Inspectorate of State Corporations and SCAC in the management and regulation of the Sector. • Develop a strategy for capitalizing State Corporations to enable them deliver specified development goals. With regard to commercial State Corporations, this works well where a holding structure is established to leverage investments in a targeted manner. • Undertake culture and attitude change training given that institutions are as good as the people who manage them. <ul style="list-style-type: none"> • Designate an institution to recruit Directors and vet their suitability, and to develop criteria for appointment. • Determine the appropriate size of a Board of Directors. • Develop enforceable frameworks for appointments of CEOs by Boards of Directors to enhance accountability • Develop a logical performance management framework with clear links between performance and rewards

Source: Stakeholder Consultations Report by the State Corporations Advisory Committee (SCAC), 2009

Stakeholder Views on the Government Owned Entities in 2013

The SCAC Taskforce had earlier undertaken consultations with stakeholders, which resulted in the Draft Policy on Management of State Corporations as well as the relevant implementation bills. This consultation took place over a period of eighteen months. The Presidential Taskforce on Parastatal Reforms also sought views from a two-tier cadre of respondents; institutional and general public views through solicitations and paid advertisements in newspapers. These views were categorized according to nine thematic areas that were derived from the Taskforce terms of reference.

Public Views

The Taskforce received fifty (50) public views by the deadline period, out of which 33% explained that intervention and regulation of governance issues is necessary for achieving State Corporation mandates. Streamlining remuneration, clear criteria of appointments,

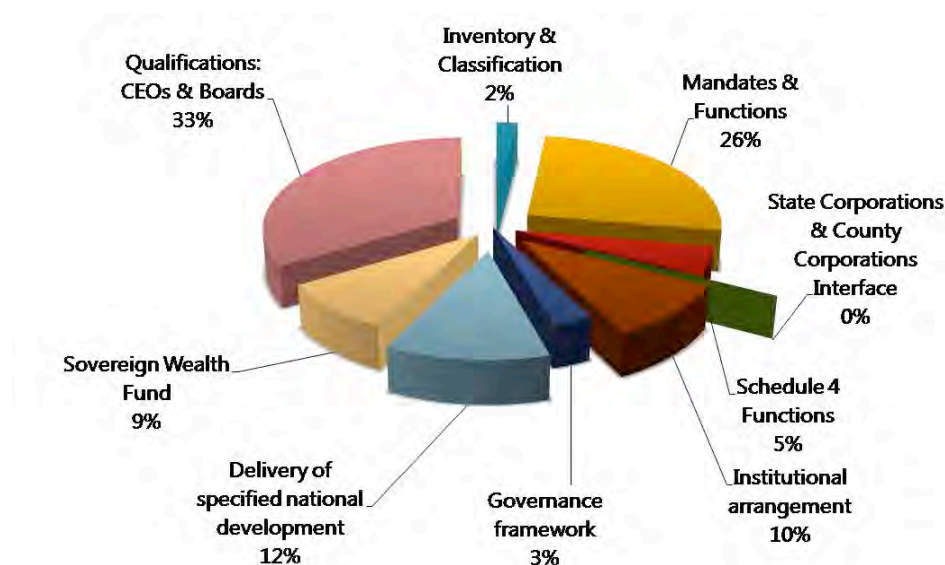
encouragement of meritocratic board member appointments, tribalism and cronyism, need for paper qualifications and relevant experience and institutionalization of a code of governance were key issues of concern.

As illustrated in Chart 2.1, 26% of the respondents required an examination of the mandates and functions of parastatals to establish their relevance and to facilitate elimination of functional duplication, dissolution due to unviability, amalgamation due to similar mandates and industry. The relevance and splitting of giant State Corporations to pursue specific sub-mandates under their existing giant mandates, which results in governance challenges was also raised. Those who felt that there was need for the examination and realigning State Corporations' operations towards delivery of national development goals comprised 12% of the respondents. They cited the need to embrace performance-contracting, review of regulatory policies including public procurement, assessment of institutional and human resource capacity and ensuring direct correspondence between national planning framework and strategic planning and execution at the state corporation level.

Ten (10) percent of the public views called for reconsideration and recommendation of a revised institutional arrangement for SCs for better return on State investment through review of the State Corporations Act with respect to the current institutional framework, global best practices and with regard to the proposed draft policy and Bill.

Nine (9) percent raised views concerning State Corporations taking managerial steps to ensure consolidation of a Sovereign Wealth Fund. While appreciating the need of a wealth fund, respondents emphasized importance in review of existing investment policies to enhance government participation in Parastatal business, review of existing divestiture policy to regain ownership of strategic investments, proposals to reclassify some corporations as Commercial entities, privatization and introduction of levies.

Chart 2.1: Public Views on Reforms of Government Owned Entities

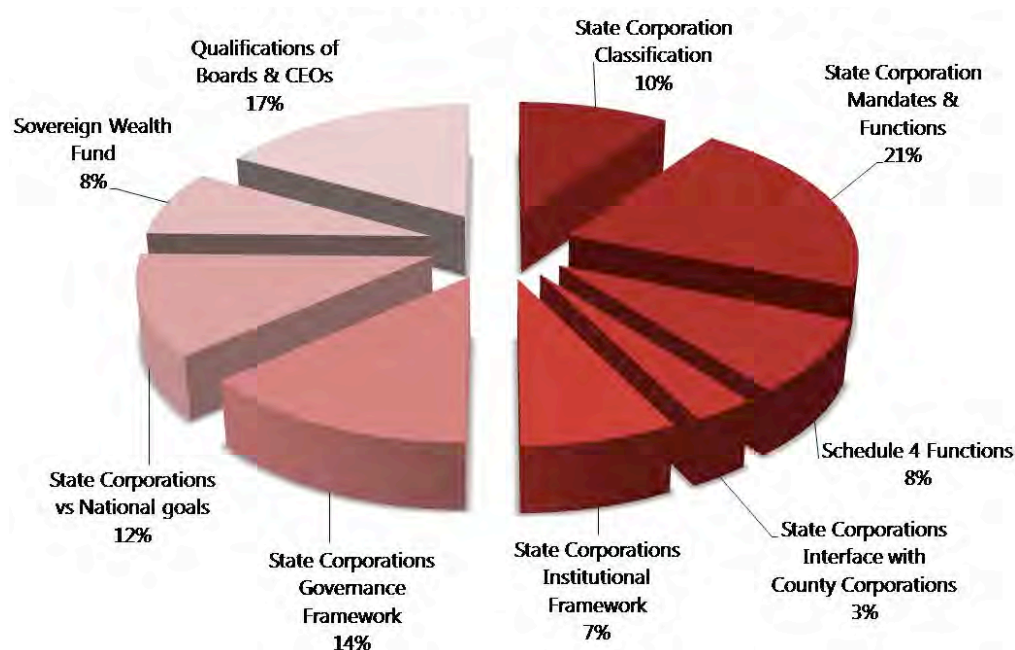


Inventory and classification, devolution, State Corporation and County Corporation interface and governance framework terms of reference shared a cumulative 10% respondent attention. Devolution functions had 5% views ranging from autonomy to human resource capacity across devolved structures and environments. Governance frameworks garnered 3% while State Corporation inventory and classification had 2%. No public views suggested how State Corporations performing national functions could interface with County Governments as County Corporations.

Institutional Views

Out of 257 state corporations, 98 institutional responses, representing 38.2% of the respondents, were received. These responses provided institutional views on State Corporation management and constitution. They are illustrated in Chart 2.2 and 21% of the responses strongly indicated that an interrogation of mandates and functions of existing SCs to confirm their relevance in national building and eliminate duplication of roles and functions was necessary. Seventeen percent of the institutions suggested an evaluation of the human resource capacity in terms of qualifications, knowledge and experience of Board Chairmen and members of State Corporations. They expect gender and age to be considered in line with the Constitution and that this will inform retention or replacement of directors and senior staff.

Chart 2.2: Institutional Views on Reform of Government Owned Entities



Fourteen percent of the responding institutions suggested appropriate policy be formulated for administrative and governance frameworks for different categories of State corporations in accordance with their functions and operational requirements to enhance existing capacities. Reiterating the role of State Corporations in overall economic wellbeing of this country, 12% respondents said that appropriate mechanisms to ensure State Corporations operate with national visions as key objective need to be put in place to ensure delivery of specified national development goals and promises.

Ten percent of the views concerned a review of the inventory of State Corporations and reclassification based on function and scope of operation to refocus energy on core businesses. Eight percent of the responses were on devolution with emphasis on identification of functions previously performed by State Corporations at National level but now assigned to County Governments by the Constitution of Kenya, 2010. 8% of the respondents reacted positively to the importance of establishing appropriate institutional arrangements for a Sovereign Wealth Fund.

Seven percent of the institutions recommended changes in institutional arrangements for State corporations including how State Corporations performing functions of the National Government will interface with County Governments.

CHAPTER THREE

EVOLUTION, PERFORMANCE AND CHALLENGES OF STATE CORPORATIONS IN KENYA

Evolution of State Enterprises and the Developmental State

State enterprises are a universal phenomenon in the economic systems of developed and developing countries. They were created in most countries to accelerate economic and social development. Their roles in national development can be analysed under the concept of developmental state, through which countries add aggregate economic values to their goods and services via the industrialisation process.

Since the 1980s, state enterprises have been undergoing scrutiny due to their poor performance. The argument is that excessive political interference and lack of managerial interests (autonomy) hamper the performance of state enterprises. In addition, the enterprises were absorbing a large chunk of government funds in the form of subsidies at the expense of other government programmes. By 1980, the fiscal burden of these enterprises had reached alarming levels and was contributing to the deterioration of the fiscal situation. Political interference made the setting of objectives and evaluating of these enterprises difficult. Further, rapid diffusion of new technologies, globalization of financial markets and increased international trade also demanded that firms be more free and flexible than is usually possible in state ownership.

The Presidential Review Committee (PRC) on South African Public Enterprises, in their international benchmarking of state owned enterprises revealed three critical issues for these entities, namely:

1. Who formulates the agenda for SOEs?
 - Developmental States have strong and empowered ‘pilot agencies’ and central planning authorities;
 - Most Developmental States move towards strengthened and capacitated central SOE ownership and oversight agencies or departments, in particular for their ‘strategic SOEs’.
2. How is the agenda for SOEs formulated?
 - Developmental States are aggressive in their interventions, but these are comprehensively planned and well-targeted, with clarity on strategic intent and priority sectors.
 - SOEs are aggressively utilized, participate in planning, and their mandates are periodically reviewed to ensure alignment to the Developmental State vision and plan.
3. What constitutes the agenda for SOEs?
 - Developmental States spell-out strategic and priority sectors, as well as the catalytic and strategic roles SOEs play in those sectors. These strategic sectors, priorities, and envisaged roles of SOEs are well-founded on research and reviewed periodically.

- The Developmental State's priorities are specifically and generally targeted to deal with a nation's unique challenges, e.g., service delivery, skills development, infrastructure, etc.
- The agenda for SOEs takes into account the unique role of SOEs and the balance they are required to achieve between economic, social, and political imperatives. The balance is between driving competitiveness, profitability, and sustainability of SOEs on the one hand, and fulfilling their strategic socio-economic objectives on the other. In this regard the balanced-scorecard approach is often used to manage the State's portfolio of SOEs.
- Developmental States have gradually adopted the portfolio approach in categorizing and managing their SOEs. The portfolio is carefully planned and managed to align to the State's strategy for its SOEs and the dynamics of domestic and international markets.
- Most Developmental States strongly promote research and development (R&D) and innovation to drive their economic growth 'catch-up' and development programmes.
- Welfare policies are intertwined with the Developmental State's plans (especially in Scandinavian Developmental States) in order to drive structural changes towards full employment and high productivity.

Various approaches have been suggested for the evaluation of state enterprises and thus making a case for privatization. First, these include financial profitability and social profitability using accounting prices. Second, is the global phenomenon of a shift from state to private ownership of public enterprises, which involves a debate over whether it is competition or ownership change from public to private that matters most in the improvement of economic efficiency. A third view on state owned enterprises transformation suggest that the foremost need is to reform the management practices related to public enterprises at both the state and enterprise levels.

The management of State Owned Enterprises (SOEs) has been evolving globally leading to principles and practices that have come to apply generally in different countries. The principles are driven principally by the global pursuit of good corporate governance necessary for viability and sustainability. The Organization for Economic Development and Co-operation (OECD) is credited with spearheading the development of governance principles for State Owned Enterprises. With time these have been adopted and domesticated by different countries within and outside the OECD.

A review of management of State Corporations in Singapore, Australia, New Zealand, South Africa, and China within OECD reveals that it is guided by a code of governance. For example, South Africa which is a member of OECD has domesticated OECD Guidelines on governance of State Owned Enterprises to address local challenges. Instructively they have come up with a code of governance for South Africa commonly referred to as ***"King III Code of Governance for South Africa"***¹.

To address performance management challenges, China and South Africa have entrenched performance contracting as a critical value system in the overall management of their State Owned Enterprises (SOE). These countries have refined the performance contracting data capture, monitoring and evaluation systems and deliberately determined that the outcomes thereof inform the structures for appointments, reward, incentives and sanctions. It is important for Kenya to adopt best practices to enable the State Corporations sector realize full potential.

Linking State Owned Enterprises to the National Development Agenda

Review of global good practice suggests that a robust national development planning process, linked to organisational strategic planning processes are key to ensure that state owned enterprises are linked to national development priorities. We look at the cases of Malaysia and South Africa in the following sections of this report.

Malaysia and the Performance Management and Delivery Unit (PEMANDU)

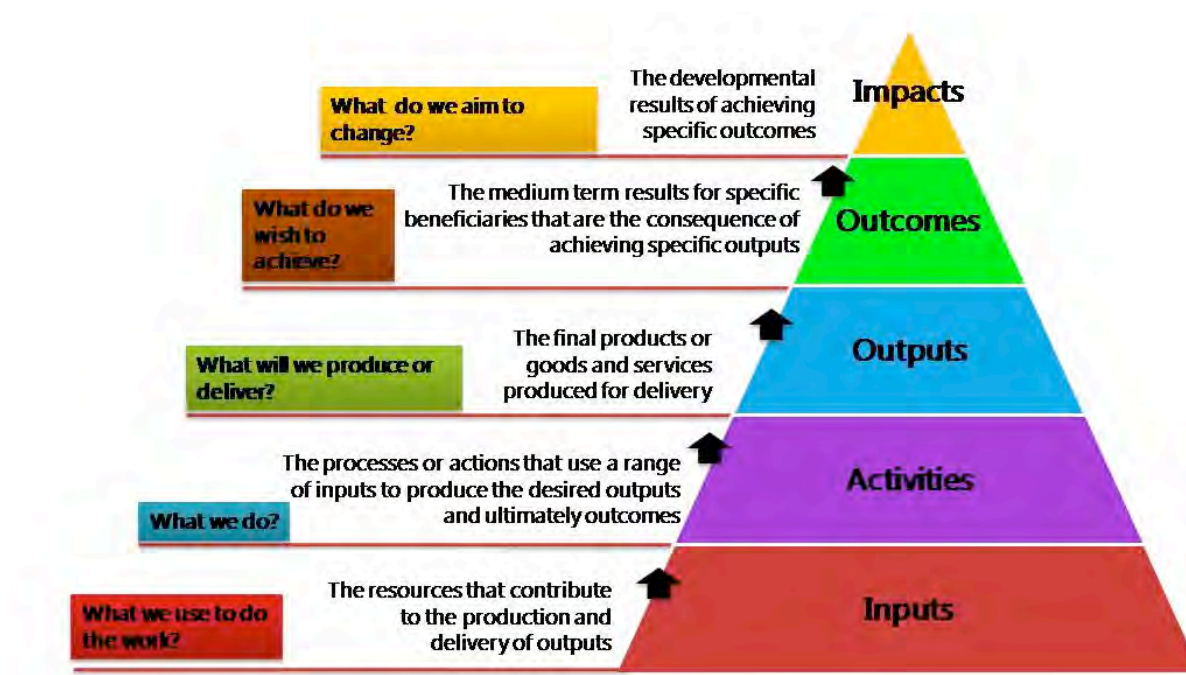
The Malaysian Performance Management and Delivery Unit (PEMANDU) is a performance management and delivery unit that brings together all the SOEs and measures the Key Result areas on the National goals. Economic transformation in the case of Malaysia's ambitions to be a high income nation by 2020 is implemented through the various SOEs. The SOEs objectives are drawn from the Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP), which are managed by PEMANDU. PEMANDU's specific focus on National Key Economic Areas (NKEA's) is an example on how to ensure all SOEs are focused on the national goals by providing delivery support to the SOEs, providing independent performance and progress reviews and catalyse bold changes in the public and private sector delivery.

The PEMANDU is governed by a delivery taskforce responsible to the NKEA's and chaired by the Prime Minister. This enhances credibility, accountability from all SOEs and transparency on performance.

South Africa and the Framework for Strategic and Annual Performance Plans

As illustrated Chart 3.1 the National Treasury in South Africa has prepared a document titled, Framework for Strategic Plans and Annual Performance Plans. This document seeks to *align strategic and annual performance planning with emphasis on the outcomes oriented monitoring and evaluation approach led by the Presidency. It is therefore important that institutions focus on the achievement of outcomes oriented planning and report the results in a simple and clear manner*².

Chart 3.1: Performance Information and Outcomes Orientation



Source: Adapted from <http://www.treasury.gov.za/publications/guidelines/SP%20APP%20Framework.pdf>

By adopting this approach, the South African government expects to achieve responsible spending by government in a manner that generates outcomes that respond to national development imperatives.

Lessons for Kenya

With the Vision 2030, Kenya has clearly articulated its national development goals, which identify key sectors and enablers of the development, set objectives and medium term targets. Decision making on strategic sectors should be based on the national blue print and economic policies within government.

In Kenya, there is a pronounced need for enhancing alignment between the specific national development priorities and the priorities of many of the GOEs. While performance contracting has been implemented over the last decade, in some instances, most of the mandates have not been consciously refreshed and the sluggish adoption and focus on the Vision 2030 among GOEs.

Chart 3.2 provides some guidance in respect of how we could ensure that the actions and activities of government owned entities (GOEs) respond to the national development needs. This will be further addressed in Chapter 10 of this report.

Chart 3.2: Aligning the National Vision with Institutional and Individual Actions



Source: Adapted from <http://www.treasury.gov.za/publications/guidelines/SP%20APP%20Framework.pdf>

Global Lessons in Transforming State Owned Enterprises

Separation between Government and SOEs: The countries benchmarked have adopted a holding company model (Singapore) or an independent government department (China, South Africa and UK). This separation frees the organizations from political interference in the management and governance of the SOE.

Ownership: The countries studied separate the ownership of the SOEs from the treasury to enhance efficiency of the SOE due to the multifaceted roles the treasury plays.

Oversight: The holding company has oversight of the SOEs creating clear lines of accountability from the owner and SOE. The Executive have oversight over the holding entity.

Establishment: The SOE establishment is recommended by the sector ministry or by the executive of the holding entity. This ensures that the establishment is aligned with the priorities of the government.

Classification of SOEs: Most of the countries studied treat commercial and non-commercial enterprises separately. Commercial entities are fundamentally different from other state corporations, and therefore need to be regulated, managed and evaluated differently.

Platforms for Successful and Responsive State Owned Enterprises

Successful SOEs should have a business structure with a mix of features from public and private sector institutions. Global standards on successful and responsive SOEs are based on the following criteria from the South African case study:

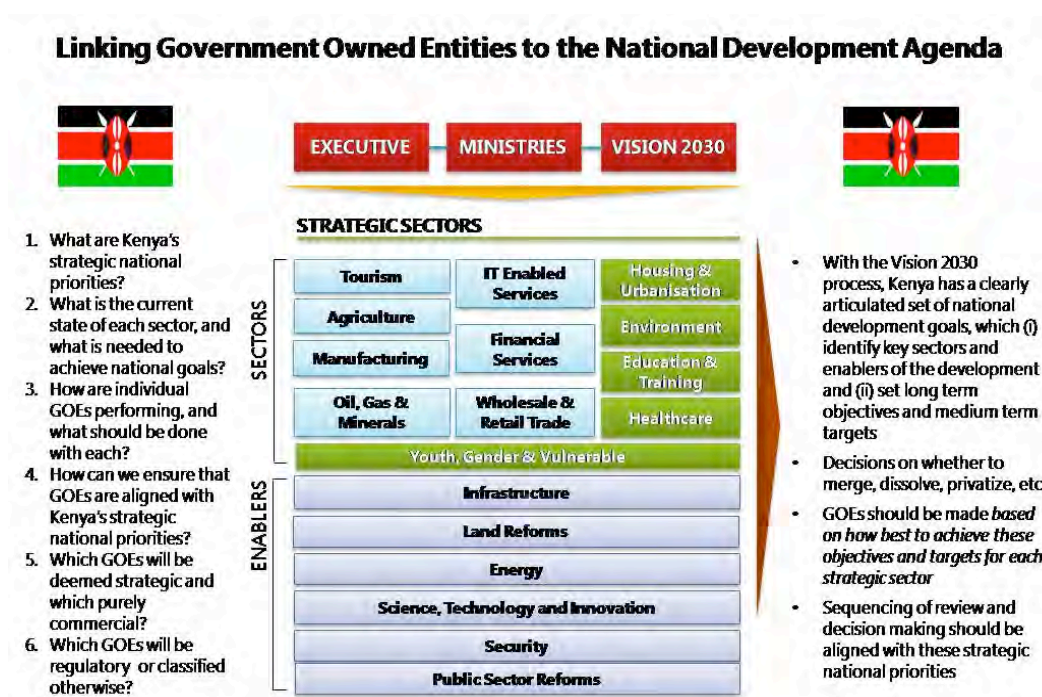
- **Strategy setting and portfolio:** The SOEs have a clearly defined, communicated and consistent strategy (including definition, purpose, role, function and objectives). Further to this the creation and maintenance of a portfolio that is reviewed periodically is fundamental.
- **Governance and Management:** Governance policies and practices that streamline points of contact between regulators, agencies, Government and SOE are put in place. In addition, appropriate legal frameworks to support and enable SOE performance are adopted
- **Standard monitoring methods:** The establishment of a monitoring criterion, which are based on a clearly defined purpose of the SOEs, is critical to their success. Standardized monitoring and evaluation that are modelled on international best practice are also in place and linkage to economic and socio-political KPIs is imperative.
- **Management and operations:** The global benchmarking identifies high management and operations as a distinguishing feature of successful SOE's. Through high operational performance SOEs are able to meet economic and developmental objectives in cost effective manner. SOEs need to have sufficient operational independence distinctly articulated access to adequate funding and ability to have attraction and retention of skills and human resources.

There is need to review SOE to ensure that they are able to meet the strategic goals of a nation. Based on the South African model the review should be based on the following:

- **Effectiveness SOEs' viability and operational effectiveness:** The SOEs viability, effectiveness and ability to add value to development and transformation plans are critical. This should be evaluated based on their ability in the current situation and their ability in the future to meet national strategic goals.
- **SOEs' governance and ownership:** The SOEs' governance and ownership model, policy, legislation, and implementation should be appropriate. This will enable SOEs to be viable and effective and contribute to State's development and transformation plans.
- **SOEs' contribution to development and transformation:** The mandate for SOEs should be made clear and aligned to the State's national goals
- **Performance Management system:** The Government should develop a common performance management system. The common performance management system should:
 - Be based on an SOE performance scorecard which should be developed by the central authority responsible for the SOEs.
 - Be aligned to the developmental goals;

- Be linked to the performance reporting systems of the oversight authority;
- Have standardized reporting guidelines for SOEs;
- Be based on the mandates and strategic objectives of SOEs;
- Include monitoring and evaluation of collaboration amongst SOEs;
- Include customer (user) satisfaction indices customized for each SOE, measured regularly (annually) through independent surveys conducted by independent auditing or research entities; and
- Assess SOEs based on outputs of the value chain that the particular SOE contributes to through its activities (total impact assessment).

Chart 3.3: Linking GOEs to Kenya National Development Agenda



Source: Adapted from Dalberg Presentation to Taskforce

The sector analysis needs to ensure that the sector and value chain analysis needs to take into account the role of the SOE, regulatory bodies and private sector. This should focus on the sector activity based on the long term and medium term targets, the challenges of the sector. It should also take into consideration the key challenges and bottlenecks such as market failures and the optimal role of state in the sector as described in Chart 3.3. In the Kenyan scenario, further analysis on the classification of GOEs into commercial and non-commercial needs to be undertaken.

There is need to select strategic sectors that will form a key focus area for the nation and selection of SOEs. To undertake this exercise there is need to examine the competitive advantage of the country, the degree of private sector participation, the impact the SOE has on the economic growth and its value dimension and finally, the economic policy paper such as Vision 2030 to draw out the strategic function and sectors that SOE should focus on.

Table 3.1: Determining the Current State of Strategic Sectors for the National Development Agenda

Key questions to address	Considerations
1. What is the current state of each strategic sector?	Sector and value chain analysis, taking into account role of SOE(s), regulatory bodies, private sector Consult sector experts – line Ministry, regulators, SOEs, private sector, advisors
2. What is gap between current and desired sector position?	Assessing current sector profile and activity in relation to what is required in order to achieve long term objectives and medium term targets
3. What are the key challenges and bottlenecks?	Analysing any market failures, e.g. lack of investment, weak capacity, limited private sector involvement, lack of competition, pricing issues, poor services delivery, gaps between supply and demand, etc.
4. What is the optimal role of state in the sector?	Use relevant benchmarking and best practice examples Assess what role of state and private sector should be in each case

Source: Adapted from Dalberg Presentation to Taskforce

Determination as to which sectors are strategic is generally achieved through a robust national development planning process.

Current Definition of State Corporations

The State Corporations Act Cap. 446, Section 2, define State corporations as:

- a) a state corporation established under section 3 of the Act;
- b) a body corporate established before or after the commencement of this Act by or under an Act of Parliament or other written law but not-
 - i. the Permanent Secretary to the Treasury incorporated under the Permanent Secretary to the Treasury (Incorporation) Act;
 - ii. a local authority established under the Local Government Act;
 - iii. a co-operative society established under the Co-operative Societies Act;
 - iv. a building society established in accordance with the Building Societies Act;
 - v. a company incorporated under the Companies Act which is not wholly owned or controlled by the Government or by a state corporation;
 - vi. the Central Bank of Kenya established under the Central Bank of Kenya Act;
- c) a bank or a financial institution licensed under the Banking Act or other company incorporated under the Companies Act, the whole or the controlling majority of the shares or stock of which is owned by the Government or by another state corporation; and
- d) a subsidiary of a state corporation.

The definition puts together commercial entities, regulatory bodies, service providers, universities, training institutions and research institutions without taking into account their mandates and operational requirements and subjects all of them to a uniform regulatory regime. The rigid control and regulatory regime prescribed by the Act and other laws that bear on State corporations tends to defeat the principle of operational autonomy, flexibility, result orientation and accountability.

The policy recognizes State corporations as incorporated entities established by Government to undertake specific development and strategic activities on its behalf either on profit or non-profit basis. This Policy replaces the definition currently provided under the State Corporations Act Cap 446 of the Laws of Kenya and introduces the definition of a County Corporations and Agencies.

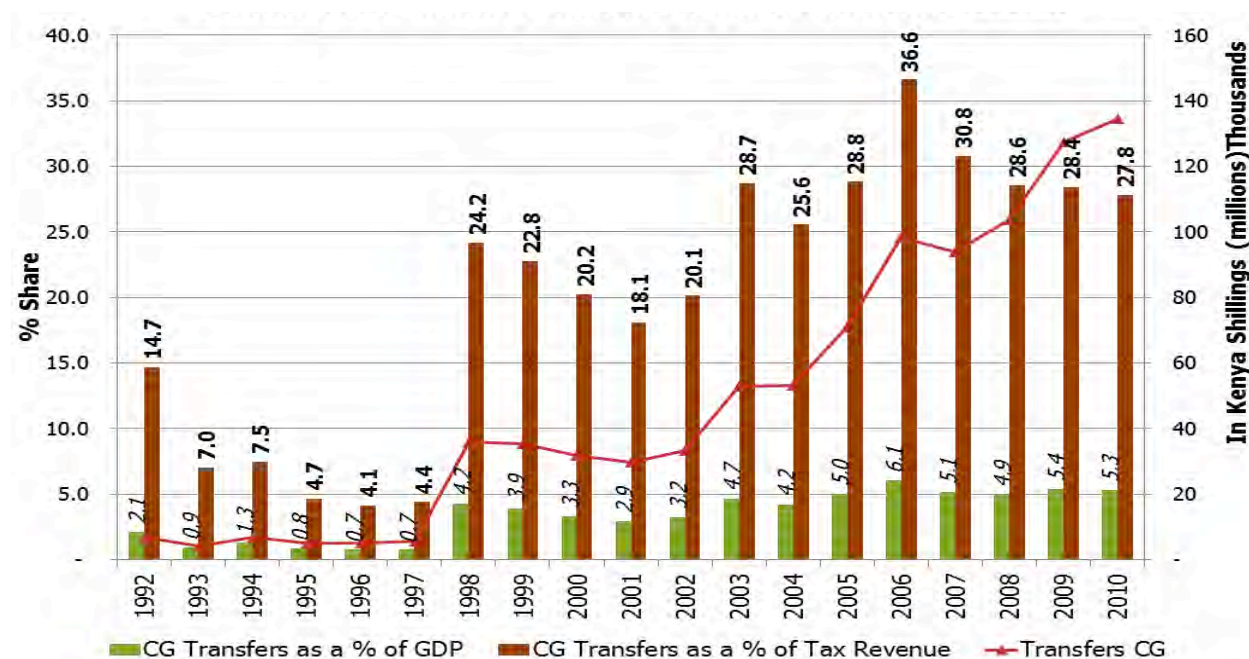
Current Performance of State Corporations

As currently described, state corporations performance has been mixed, characterized by notable successes, but also significant failures. In reviewing their performance therefore, this must be carefully noted in making a judgment on the way forward.

Central Government Transfers to Parastatals

Central government transfers to parastatals and SAGAs have been rising over the years, with sharp increases observable in the years 1997, 2002 and 2008. It is worth observing that these increases are in periods around general elections in the country. The transfers as a percentage of GDP have also been rising, since 1997 from a low of 0.7% to 5.3% in 2010. In terms of transfers as a percentage of tax revenue, this has risen from 14.7% in 1992 to a high of 36.6% in 2006, but has hovered above 25% since then as illustrated in Chart 3.4.

Chart 3.4: Central Government Transfers to State Corporations



Source: Computed from the KIPPRA Treasury Macro Model

Revenue and Expenditure Performance of State Corporations

As depicted in Table 3.2, state corporations have played a significant role in capital formation as shown by the rapid expansion of total capital expenditure of the state corporations for the period 2008-2011, which expanded at a rate of 70% per annum raising the capital of state corporations from Ksh.15.7 billion in 2008/09 to the projected Ksh.392.2 billion by the end of 2011/2012 financial year this is a more than 20-fold increase in a very short period.

Table 3.2: Estimate of Revenue and Expenditure of State Corporations 2008/2009-2011/2012

In Kshs '000s	2008/09	2009/10	% Change	2010/11	2011/12	% Change
Internally Generated Income	228,597,297	271,855,532	15.9	321,755,289	383,248,284	16.0
Government Resources:						
Grants – Recurrent	48,876,698	67,629,081	27.7	67,980,276	62,493,439	-8.8
Grants - Development	10,480,694	20,407,739	48.6	49,733,832	76,801,526	35.2
Loans	-	-		-	-	
Others Incomes:						
Grants	6,626,742	10,897,081	39.1	18,086,621	23,370,392	22.6
Loans	-	1,863,821	-	7,645,000	64,373,032	881
Total Income	294,581,431	372,653,254	20.9	465,201,018	610,286,673	23.8
EXPENDITURE:						
Recurrent Expenditures	257,246,682	297,133,172	13.4	336,439,743	381,857,984	11.9
Surplus or (Deficits)	25,405,155	51,990,428	51.1	76,798,548	87,325,089	12.1
Capital Expenditures	15,652,927	26,934,230	41.9	145,126,106	392,209,841	96.4

Source: Republic of Kenya Annex of Estimates of Revenue and Expenditure of State Corporations of the Kenya Government (various issues)

Reliance on the Exchequer

Data shown in Table 3.3 shows that only 51 State Corporations do not receive any budgetary support. With regard to wage bill, 96 State Corporations would require Treasury support as it cannot be covered by internally generated funds. Dependence on the Treasury for salaries is shown in Table 3.3.

Table 3.3: Dependence on Exchequer for Salaries

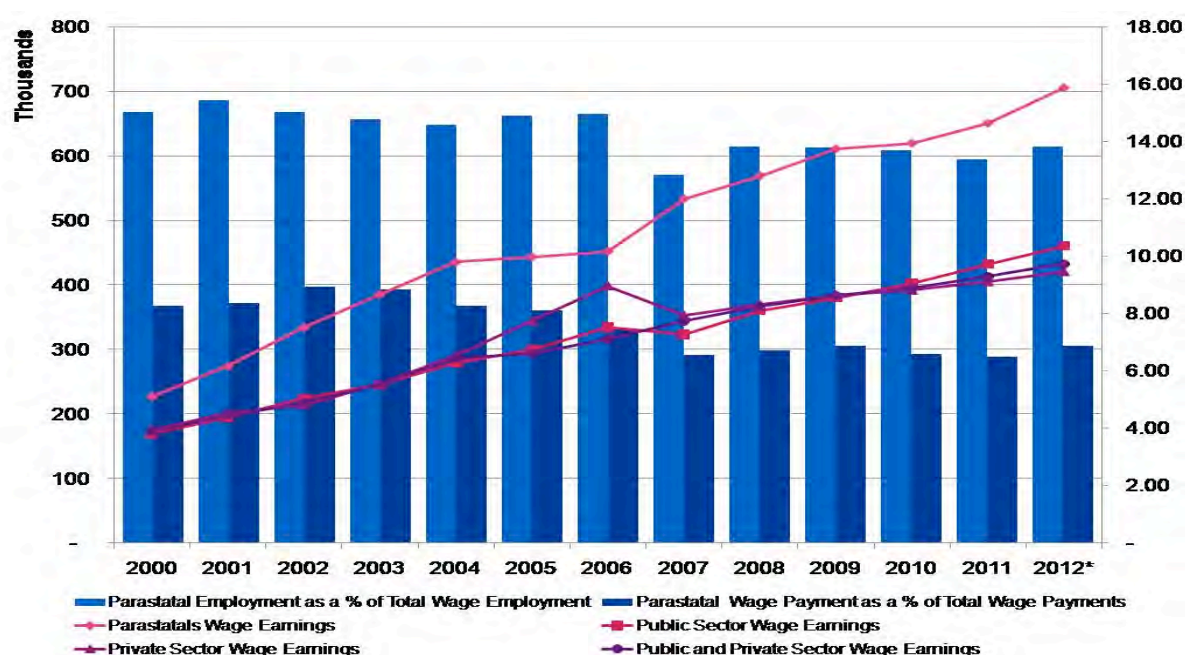
Description	No. of State Corporations	No. of Staff	Wage Bill	Internally Generated Funds
State Corporations Independent on Treasury for Salaries	92	62,083	65,219,765,885	223,341,305,714
State Corporations Dependent on Treasury for Salaries	96	57,606	65,981,801,629	22,573,223,911
Total	188	119,689	131,201,567,514	245,914,529,625

Source: SCAC Taskforce Report 2013

Out of the 188 State Corporations that responded, 92 pay salaries from internally generated funds while 96 pay salaries from funds allocated by the Treasury.

As a group the Corporations have a wage bill of over KES. 131.2 billion of which the National Treasury finances 60.34 billion (46%). The total wage bill takes about 4% of GDP (currently KES. 3.44 trillion³) while their internally generated funds contribute about 7% of GDP. The Government contribution to salaries in the sector is about 6% of recurrent expenditure for 2012/2013 financial year. In a sample of 188 entities, only 51 did not receive government budgetary support.

Chart 3.5: Parastatals Share of Formal Wage Employment in Kenya

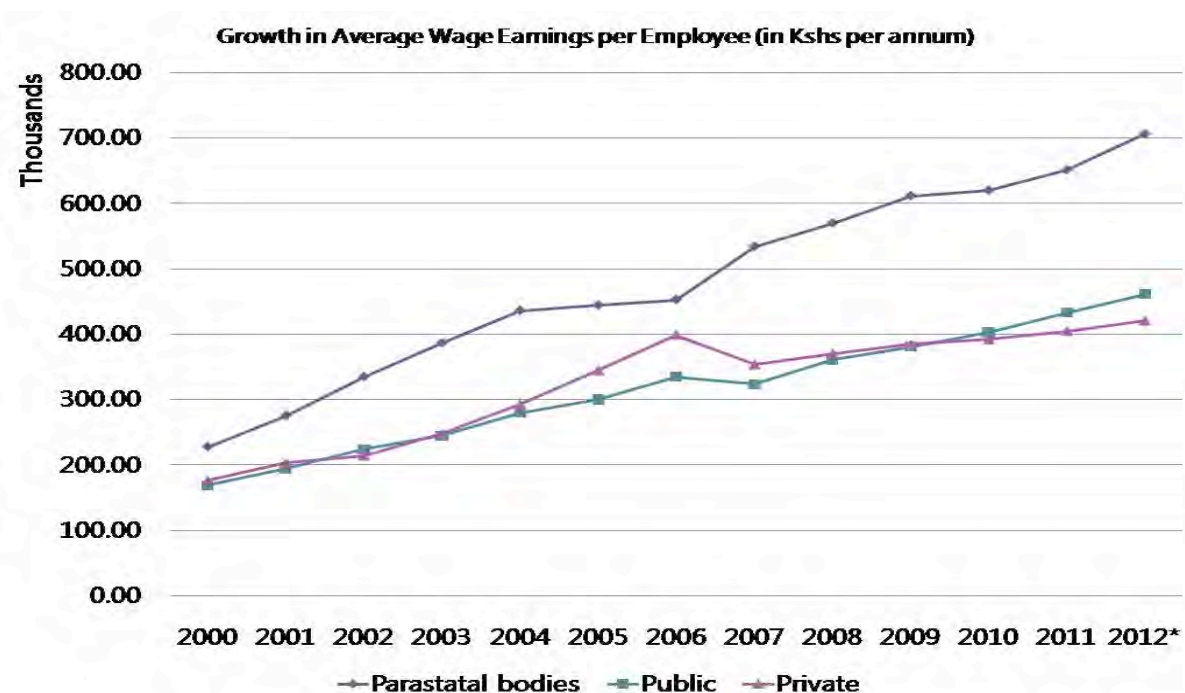


Source: *Economic Survey, 2013 and Statistical Abstract, 2012*

Employment and Wage Earnings

In addition to contribution to capital formation, state corporations contribute significantly to formal employment. As illustrated in Chart 3.5, formal wage employment in the parastatals has been declining in both absolute numbers, as well as its share of the formal wage employment. In the year 2000, state corporations accounted for about 15% of total wage employment, declining marginally to 13.8%.

Chart 3.6: Parastatals Share of Formal Wage Employment in Kenya



Source: *Economic Survey, 2013 and Statistical Abstract, 2012*

Similarly, in the same period, parastatal wage payments as a percentage of total wage payments declined from 8.3% (2000) to 6.9% (2012). This is perhaps a reflection of the withdrawal of the state from the sector through privatization efforts.

On the other hand, as illustrated in Chart 3.6, data on average per capita annual wage earnings to parastatals shows that it is rising faster than in the wider public sector or private sector, suggesting that the state corporations sector pays more than even the private sector or the overall public sector. This is anecdotal evidence as to why, apart from the clear efficiency and effectiveness arguments, there is a demand for establishment of more parastatals.

Turnover, Profit and Dividend Performance of State Corporations

There has been improvement in performance of State Corporations perhaps due to improvement in governance that has been witnessed from 2004. In the period 2009 to 2012 commercially oriented state corporations registered a growth in turnover, profits and dividends (to the Exchequer) as shown in Table 3.4.

Table 3.4: Turnover, Profit and Dividends of Commercial State Corporations

Criteria	2009/10	2010/11	2011/12
Turnover	216.6	238.6	284.2
Profit	30.1	40.4	40.1
Dividend	1.12	1.27	2.23

This reflects growth in Turnover, profit and dividends of 31.2%, 33.2% and 99.1% respectively between 2009/10 and 2011/12. In the same period a number of State Corporations made losses as shown below.

Losses by State Corporations

In 2011/12, eleven (11) commercial state corporations made losses, compared to twelve (12) in 2010/11 and sixteen (16) in 2009/10. This represents 21%, 23% and 31% respectively of all commercial oriented Government Owned Entities as shown in Table 2.5.

Table 3.5: Losses made by Government Owned Entities

Name of the institution		Loss (Kshs.)		
		2009/10	2010/11	2011/12
1	National Cereals & Produce Board	332,672,000	478,227,000	166,713,000
2	IDB Capital Limited	35,907,000	37,343,000	9,536,000
3	Numerical Machining Complex	5,644,000	1,259,000	20,061,000
4	Kenya Industrial Estates Ltd.	68,611,000	80,263,000	12,236,000
5	Kenya National Trading Corporation	11,786,000	14,729,000	29,472,000

High Level Review of Liabilities of State Corporations and Government of Kenya Loans Written Off

State corporations have legal capacity to contract debts and other liabilities to finance their requirements. As at the end of 2011/12 FY, GoK loans to state corporations (both on-lent funds and direct loans from exchequer resources) stood at Ksh.88 billion. On-lent funds are monies borrowed by GoK from domestic, bilateral and multi-lateral sources, and lent to state corporations by means of subsidiary loan agreements between the Treasury and the individual state corporations.

Table 3.6: Status of GoK Loans (On lent and Direct) to State Corporations as at 30th June 2012 (Kshs. Million):

Ministry/Sector	Outstanding Loans	Principal Arrears	Accrued Interest	Total
Energy	29,630.00	3,357.7	4,192.8	37,177.5
Water & Irrigation	22,326.7	140.2	1557.5	24,024.4
Local Government	7,634.9	4,843.8	10,715.6	23,194.3
Transport	6,705.2	2,405.7	13,003.6	22,114.5
Agriculture	5,675.2	3,731.3	6,369.7	15,776.2
Education	11,107.6	62.5	19.9	11,190.0
Environment & Natural Resources	2,486.6	1,262.4	3,149.5	6,898.5
Finance	1,370.3	104.2		1,474.5
Tourism	188.0	140	574.5	902.5
Trade	764.7	128.8	3.9	897.4
Lands & Settlement	87.7	84.0	29.6	201.3
Total	87,976.9	16,257.6	39,616.6	143,851.1

Source: National Treasury Submission, September 2013

Over the FY 2012/13 FY, GoK lent to state corporations an additional amount of Ksh.55.5 billion as follows:

Table 3.7: Additional Loans to State Corporations by Sector in 2012/2013

Sector	GoK Loan (Kshs.)
Micro Finance*	693,250,000
Water	17,416,213,440
Energy	37,394,052,470
Total	55,503,515,910

* Loans to this sector benefit private entities, especially targeting small agri-business enterprises; not state corporations.

Source: National Treasury Submission, September 2013

Another class of liabilities comprises publicly guaranteed debt, which refers to debt owed by public entities to both foreign and local creditors but guaranteed by GoK. These are contingent liabilities that occasionally crystallize. The stock of publicly guaranteed debt as at 30th June 2012 amounted to Ksh.47.17 billion as shown in Table 2.8.

Table 3.8: Status of Outstanding Publicly Guaranteed Debt, June 2013

Entity	Outstanding Loan Amount (Kshs. Millions)	Purpose	Creditor
Kenya Broadcasting Corporation	5,996.6	KBC Modernization Project	Japan
Telkom Kenya	362.2	Purchase of Microwave Telephone System	Canada
TARDA	2,495.5	Tana Delta Irrigation Project	Japan
EA Portland Cement	3102.2	Cement Plant Rehabilitation Project	Japan
KenGen	26,871.7	Various Energy Projects	Japan
Kenya Railways	3,790.5	Kenya Railways Concessioning	IDA
Kenya Ports Authority	4,549.9	Mombasa Port Modernization Project	Japan
NCPB	Unutilized	Importation of Maize	USA
Total	47,168.6		

Source: National Treasury Submission, September 2013

The column on “Outstanding Loan Amount” shows the amount yet to be paid to the lenders by the corporation, or indeed by GoK in cases where the corporation has defaulted and GoK guarantee called up. For instance, out of the explicit contingent liabilities shown above, the guaranteed debt in respect of KBC and TARDA has since crystallized and GoK guarantee called up.

For KBC, GoK has so far repaid Ksh.9.29 billion leaving the outstanding amount of Ksh.5.997 billion as shown above. The loan was an Overseas Economic Cooperation Fund (OECF) [Japan] loan that was contracted in 1989 and guaranteed by GoK, in respect of the KBC Modernization Project. The OECF loan of Japanese Yen 15.441 billion (Ksh.8,287,588,398 at the exchange rate at the time) had a moratorium period of 10 years (1989 – June 1999) and repayment period of 20 years (1999 – 2019). KBC has not paid GoK any portion of this loan, but has continued to accumulate the liability (principal and interest amounts) in its books. As at 30th June 2012, the OECF loan reflected on KBC books as “GoK/OECF Loan” had accumulated to Ksh.28.925 billion, comprising a current (i.e. overdue) portion of Ksh.26.915 billion and a non-current portion of Ksh.2.010 billion. The total amount as at 30th June 2013 had risen to Ksh.32.345 billion.

For TARDA, GoK as at 30th June 2013 had repaid Ksh.3.44 billion comprising Ksh.2.34 in principal repayment and Ksh.1.1 billion in interest. Consequently, the amount refundable by TARDA to GoK as at 30th June 2013 was Ksh.3.44 billion plus penalties amounting to Ksh.7.7 billion. Hence TARDA owed GoK a total amount of Ksh.11.14 billion in respect of this explicitly guaranteed debt as at 30th June 2013.

From time to time, Treasury carries out loan restructuring of individual state corporations involving conversion of debt to equity (to the extent that the corporation’s assets support) or debt write-off and subsequent discharge of corporations’ obligation to repay or a combination of both. The following are instances of GoK debt restructuring and/or debt write-offs involving commercial state corporations:

Agricultural Finance Corporation (AFC)

As at June 2002, the indebtedness of AFC to GoK was Ksh.8.5 billion comprising Ksh.2.1 billion in principal amount and Ksh.6.4 billion in interest. Cabinet approved a write-off of Ksh.8 billion out of the total amount of Ksh.8.5 billion, with the balance of Ksh.500 million remaining in the books as GoK loans.

Kenya Railways Corporation (KRC)

As at June 2010, loans on-lent by GoK to KRC, inclusive of interest and charges, amounted to Ksh.39.993 billion. KRC had defaulted on the repayment of Ksh.1.5 billion loan on-lent to it by GoK. Based on a revaluation, the value of KRC assets was Ksh.42.4 billion; hence the conversion to equity of GoK debt amounting to Ksh.39.993 billion was considered feasible and reasonable.

Public Sector Owned Sugar Companies (Nzoia, South Nyanza, Chemelil, Muhoroni and Miwani)

The debt restructuring for the five public sector owned sugar companies was approved by Government as part of the on-going privatization of the companies. Out of the total Ksh.41,825,786,485 owed to GOK and Kenya Sugar Board by the five sugar companies, Kshs.33,780,465,838, was approved for write-off in order to clear excess debt from the books of the companies that had excess debt (i.e. debt in excess of assets) namely, Nzoia Sugar Company, Muhoroni Sugar Company and Miwani Sugar Company. The Kshs.33.8 billion written off will be divided proportionately between GOK and Sugar Board, i.e. based on the respective amounts owed.

Further, out of the remaining Kshs.8,045,320,647 after the debt write-off to clear the excess debt, an additional Kshs.5,952,000,000, equivalent to the asset value of plant and machinery,

was approved for write-off to facilitate reconstruction of the sugar mills (new plant and equipment).

National Bank of Kenya (NBK)

GoK made a decision to take over debts amounting to Ksh.20 billion owed NBK by state corporations. This decision was made in order to enable NBK meet key statutory/prudential ratios, and hence avert a potential crisis in the financial sector that could arise if NBK went down altogether. It should be noted, however, that this decision did not amount to a debt write-off and discharge in favour of state corporations; the state corporations' still need to pay GoK the balances.

Outside of GoK on-lent and direct lending, state corporations undertake borrowings on the strength of their balance sheets. It is largely the commercial state corporations that borrow funds, mainly from the local market. The law requires that such borrowings be approved by GoK (parent Ministry with the concurrence of the Treasury).

It should be borne in mind that non-commercial state corporations play the role of implementing agencies of Government in areas ranging from social services such as education and health, to physical infrastructure (roads, transport, energy and water) and regulatory services. They are specialized agencies that deliver public projects and programmes, including Vision 2030 flagship projects, on behalf of GoK.

Necessarily, therefore, non-commercial state corporations hardly borrow funds from the market on the strength of their balance sheets and cash flows, but instead access GoK funding in form of grants/subventions and, where feasible, on-lent funds.

Given Kenya's growth plans under Kenya Vision 2030, it is expected that this number will continue rising. The key concern will be to enhance the efficiency and effectiveness in applying this debt to support the national development effort.

Notable Successes and Failures: Opportunities to Enhance Contribution to the National Development Agenda

There are notable failures in the history of performance of state corporations in Kenya. These include the Kenya Railways Corporation, the Numerical Machining Complex, the Kenya Meat Commission and the Kenyatta International Convention Centre amongst others. However, there are also notable successes, which include Safaricom and Kenya Airways. These successes have placed Kenya on the continental and world map in their areas of operations. A notable feature of the successful state corporations is that they have been turned around through strategic partnerships with anchor investors who have brought in knowledge and expertise to enhance their performance.

Notable Successes

Safaricom, Kenya Airways and the financial sector regulators represent notable successes in the service delivery sector, clearly facilitating the positioning of Kenya as a financial, transport and communications hub in the continent and the world at large. In all these cases government entities which were not working optimally were either transformed through engagement with strategic and/or anchor investors, or introduction of missing links in the product value chains, who then added value before these could be partially privatized.

Notable Failures

Kenya Railways Corporation is a shell of its former self, despite its significant role in creation of and realization of the nation of Kenya. The lack of strategic vision of what this entity could and should do has led to selection of sub-optimal choices that have cascaded negative effects into the wider economy, beyond the railways itself. These include congestion and

road carnage on our roads as well as high cost of doing business for the private sector and the government itself.

Missed Opportunities

Numerical Machining Complex (NMC), previously known as the Nyayo Motor Corporation limited represents a significant missed opportunity, pointing to lack of effective translation of strategic vision into tangible outputs contributing to the national development effort. Table 3.9 compares the NMC with the Proton established in Malaysia. Proton adopted a strategic approach by collaborating with Mitsubishi and leveraging domestic demand to create a product that supported other parts of the Malaysian economy.

BOX 3.1: PRODUCTS FROM THE FINANCIAL SECTOR

- Making Kenya a world leader in mobile money leading to greater financial inclusion ala MPESA, MShwari
- Establishment of Islamic Banking
- Innovative saving for retirement in Kenya through “Mbao” (US\$0.25 per day) or National Jua Kali Pension scheme which targets “jua kali” (or informal sector workers) artisans. This has received global recognition and is being adopted by other countries such as South Africa and Nigeria.

Table 3.9: Comparing the Path of the Kenyan Pioneer and the Malaysian Proton Vehicles

Entity	Nyayo Motor Corporation	Proton (Perusahaan Otomobil Nasional Berhad)
Founded	1986	1983
Government Role	Little evidence of policies to protect domestic industry	Land; Infrastructure and Favourable Policies (protection of the domestic market)
Funding	Wholly Government	Government of Malaysia
Technology	Worked to develop vehicle from scratch. Five Prototypes, launched in 1990 University of Nairobi, Department of Defence and Kenya Polytechnic constituted research team.	Mitsubishi Motors of Japan Citroen, Lotus Technologies (Volkswagen)
Shareholding	University of Nairobi – 49% Kenya Railways Corporation – 51%	Government of Malaysia Mitsubishi Motors of Japan Currently wholly Malaysian
Annual Output	0 vehicles	130,000 vehicles (21% local market share), produced by 10,000 workers

The Kenya Meat Commission represents another missed opportunity for transforming the livestock industry in Kenya. The sad story that is the mismanagement of the parastatal has meant that Kenya has lost opportunities to other countries in the region and world and the region. This has worked to the detriment of the economy and the people of Kenya in terms of lost wealth creation opportunities.

The Kenyan approach in turning around the fortunes of state corporations will be key in the effort to unlocking shareholder value for the Kenyan public going forward.

Policy, Legal, Institutional and Regulatory Reform of State Corporations in Kenya

Background

State Corporations are established for implementation of government policies and programmes for socio-economic development. The principles for their establishment are operational autonomy, flexibility, results-orientation, value for money and greater accountability and transparency that are difficult to realize in mainstream government bureaucracy. These entities are distinct from departments of government ministries by virtue of incorporation, operational autonomy, commercial and quasi-commercial orientation, self-accounting principles and accountability.

In 1965 the Government, through *Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya*, resolved to establish state corporations with a view to: accelerating economic and social development, redress regional economic imbalances, increase Kenyan citizen's participation in the economy, promote indigenous entrepreneurship, and promote foreign investments through joint ventures. The Policy envisaged that the nationalized operations would operate efficiently, cover costs and earn profits. This marked the beginning of government investments in manufacturing, agriculture and other sectors that came to be referred to as state corporations.

This route to development is not peculiar to Kenya. Virtually, all governments have used incorporated entities as vehicles for development. In Malaysia, State-Owned Enterprises (SOEs) are assigned by the Government specific objectives on Key Result Areas pegged on the national goals for transformation of Malaysia to a high income country by 2020.

State Corporations are operationally autonomous from mainstream civil service in that they operate at arms' length and may be partially, or even fully funded by Government or financially independent on account of profits, fees, commissions and other internally-generated funds. State Corporations that receive exchequer funding are those that by nature, are not-for-profit but perform specific functions that need to be funded by Government. Examples of such functions:

- i. **Infrastructure development** performed by Kenya National Highways Authority (KeNHA), Geothermal Development Corporation (GDC), and Kenya Electricity Transmission Company (KeTRACO), among others.
- ii. **Regulatory functions** performed by entities such as Energy Regulatory Board (ERC), the National Environment Management Authority (NEMA), Public Procurement Oversight Authority (PPOA), and Kenya Bureau of Standards (KEBS).
- iii. **Social functions** performed by entities such as Kenyatta National Hospital (KNH), the public universities, Kenya National Library Services (KNLS), Kenya Medical Supplies Agency (KEMSA), among others.
- iv. **Teaching and Research functions** undertaken by research institutions such as Kenya Medical Research Foundation (KEMRI) and public universities.

Commercially oriented State Corporations, generally, should not depend on Exchequer funding to meet their operations, EXCEPT in cases where they are required to carry out social or strategic programmes or where an entity is unable to sustain itself on account of persistent poor performance.

Policy, Legal, Institutional Reforms

Table 3.10 illustrates in summary form the history of state corporations in Kenya. The first comprehensive review of state corporations in Kenya was carried out in 1979 by a Presidential Committee on review of Statutory Boards. The report of the Committee is

commonly referred to as the Ndegwa Report. The committee found that Government owned entities referred to variously as “Parastatals” were major players in the economy, employing as many people as the mainstream civil service. It was however noted that since establishment of those entities was not guided by careful analysis it had led to significant functional overlaps as well as inefficiency, financial mismanagement, waste and malpractices which was attributed to lack of a coordinating body. The Committee also attributed the problems to absence of government administrative control.

Table 3.10: History of State Corporations from 1960 to present

Period	Characteristics
1960 - 1970	This was a period of expansion as the Government undertook indigenization and diversification of the economy. At this point in time the private sector had limited capacity and the Government had to step in and participate in economic activities that are normally the domain of the private sector.
1971 – 1980	This could be characterized as a period of management, governance and budgetary paralysis in the sub-sector leading the Government to undertake the first review of the state corporations with a view to finding a solution to the problems
1981 - 1990	During this period, the sector continued to expand tremendously thereby creating pressure and drain on the exchequer. The budgetary crisis led the Government to adopt economic structural adjustments following the <i>Eliud Burg report of 1982</i> , under the auspices of the World Bank titled <i>Accelerating Development in Sub-Saharan Africa</i> . This report was critical of too much government in business and advanced the concept of lean government. The Government had to reconsider its development strategy and came up with Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth.
1990 - 2002	This was a period of divestiture reforms pursuant to Sessional Paper No. 1 of 1986. The Government undertook several reform measures that included substantive divestiture and privatization.
2003 to date	This is a period of governance reforms seeking to introduce good corporate governance to enable State corporations deliver their mandate. The change of Government in 2002 created a climate for reforms and the sector was considered critical to implementation of socio-economic programmes. There was emphasis on income generation, reduction of government grants and subsidies and enforcement of performance contracts. This period also saw the introduction of Public Private Partnerships for mobilization of resources.

The Committee recommended the establishment of the following institutions: Department of Government Investments and Public Enterprises (DGIPE), Parastatal Advisory Committee (PAC), the precursor to SCAC, and strengthening of the role of the Inspectorate of Statutory Boards, the precursor to the Inspectorate of State Corporations. The Committee also recommended enactment of a law for regulation of Parastatals.

In 1982, under the purview of a Presidential Working Party on Public Expenditure, it was acknowledged that the government investments in state corporations had exceeded the objectives of the Sessional Paper No. 10 of 1965 as some state corporations had exceeded their mandates and invested in areas that should be left purely to the private sector. Extensive investments in the sector had also imposed on the government huge financial and management burden and some of the ventures had become unviable and unprofitable.

The Working Party observed that the problems affecting parastatals could be traced to their relationship with parent ministries. Appointments of chairpersons, board members and Chief Executive Officers were often politically motivated and the management of their affairs was considerably political. At the same time, the entities received conflicting instructions from sources within government including: Parent Ministries, Inspectorate of Statutory Boards, Parastatal Advisory Committee and the Treasury which tended to negatively impact effectiveness and efficiency.

The Government was advised to clearly define the scope of the authority of parent ministries as well as the authority of the Board and the management, setting out specific terms of reference for Parastatal Advisory Committee and how they relate to those of the Treasury and parent ministries. It was also advised to enact the State Corporations Act and provide for harmonization of legislation enacted prior to enactment of the State Corporations Act.

The Government was further advised to divest from non-strategic investments which ranged from textiles, sugar, pharmaceuticals, radios, batteries, alcohol, vehicles, and shoes among

others. It was also deemed necessary to review all government investments and parastatals with a view to determine those whose:

- i. objectives have been achieved and which should be dissolved;
- ii. objectives would be absorbed by the parent ministries; and
- iii. functions would be more efficiently performed by the private sector.

Both the *1979 Ndegwa Report on Review of Statutory Boards* and the *Report of the 1982 Presidential Working Party on Public Expenditure Review* came up with far reaching recommendations. One of these recommendations led to the enactment of the State Corporations Act in November 1986.

In the same year, the Government published *Sessional Paper No. 1 on Economic Management for Renewed Growth*. With regard to government investments, it was noted that direct investment by the Government in modern industry was a lower priority in terms of usage of public resources that are urgently needed to support agricultural growth, extend rural infrastructure and maintain social services.

Divestiture and Privatization

Guided by recommendations of the 1979 and 1982 Ndegwa Reports the Government acknowledged the need for restructuring and reforms of the sector starting in 1980. The *Sessional Paper No. 1 of 1986* and the implementation of economic structural adjustment led to a shift in policy which saw the government increasingly move away from manufacturing and other sectors where the private sector could operate more effectively. The privatization programme that started in the 1980s focused on outright sale of non-strategic investments through which the Government offloaded a large number of investments and commercial state corporations where it was considered they would be more efficient under private sector.

The Government through *Sessional Paper No. 4 of 1991 on Development and Employment in Kenya* decried the continued deterioration of the performance of state corporations. It was observed that while the creation of state corporations through Government participation in economic activities was perhaps appropriate soon after independence, the objectives for and the circumstances under which most of the state enterprises were created, had since changed. The Government underscored the need to urgently implement privatization and divestiture in view of the managerial problems afflicting state corporations leading to low returns on Government investments.

In 1992, the Government initiated a comprehensive state corporation's reform programme whose main objectives were to:

- (i) shift more of the responsibility for production and delivery of products and services from the public to the private sector;
- (ii) reduce the demand of the state corporations on the exchequer;
- (iii) enhance the economic returns on Kenyan resources by achieving greater efficiency in both private and public enterprises through greater responsiveness to market signals and commercial criteria;
- (iv) rationalize the operations of State corporations sector;
- (v) improve the regulatory environment by selecting more economically rational means of regulation (thereby reducing conflicts of interest between the regulatory and commercial functions of State corporations); and
- (vi) broaden the base of ownership and enhance capital market development.

Arising from the issues the Government adopted a policy on *Public Enterprises Reform and Privatization in July 1992* that provided scope of privatization, framework, guidelines and

procedures for privatization. The programme funded by World Bank credit, Government direct or indirect investment through ICDC, IDB, KTDA, KTDC, and other institutions, targeted 240 non-strategic commercial enterprises. Of these, thirty three (33) state corporations were regarded as strategic enterprises for they provided essential services or were seen as playing key roles in terms of national security, health and protection of environment. By the time the first phase of the programme came to an end in 2000, most of the non-strategic commercial enterprises had either been fully or partially privatized, liquidated or brought under receivership. Other reforms undertaken during this period included separation of marketing from regulation, unbundling of communications to create the Kenya Postal Corporation, Telkom Kenya Limited and Communications Commission of Kenya were established. Similarly the energy sector was unbundled to create KENGEN, KPLC (now Kenya Power) and ERB (Energy Regulatory Board).

Current implementation of the policy on divestiture and privatization has made it increasingly clear that it is not prudent to fully divest from sectors that hold key to economic development. After significant reduction of Government stake in KPLC and KENGEN it became necessary to create Kenya Electricity Transmission Company, Geothermal Development Corporation and Rural electrification Authority as vehicles for Government investment in electricity generation, expansion of the national grid, and access to electricity. The recent developments in North America and Western Europe where governments recently nationalized corporations critical to functioning of the economy prove the importance of participation of Government in business. Investment in business also makes governments less dependent on tax revenue as in the case of China and New Zealand.

Legal Framework

The enactment of the State Corporations Act Chapter 446 in 1986 for the first time created a regulatory framework for the management of state corporations. Before this the sector was largely guided by individual enabling legislative and legal notices. As a result, each state corporation operates within the legal instrument under which it is established, and provisions of the State Corporations Act. The situation is different for corporations operating under the Companies Act Chapter 486, the Banking Act Chapter 488 and Insurance Act Chapter 487. Corporations operating under the Companies Act, Insurance Act and Banking Act are required to comply with requirements therein as well as those of the State Corporations Act. Those that are listed on the Nairobi Securities Exchange are also required to comply with Capital Markets Act Chapter 485A and Capital Markets Authority Regulations. In this regard, governance requirements from various laws and agencies are often at conflict, which effects decision making and effectiveness.

Institutional Framework

The State Corporations Act Chapter 446 (1986) was meant to control and regulate⁴ state corporations. Consequently it created an institutional framework with many actors, a reality that, as noted in 1982, tends to undermine the effectiveness and efficiency in the sector. The Act created roles for the Presidency, parent ministry, the Treasury, Board of Directors, State Corporations Advisory Committee, and the Inspectorate of State Corporations. These institutions have, as noted in 1982, continued to issue contradicting instructions to Government Owned Entities. Indeed some of the roles serve the purpose of defeating operational autonomy, flexibility and accountability, while perpetuating conflict of interest in oversight.

Implications of the Constitution of Kenya 2010 on the Role of the State in National Development

Kenya has set itself an ambitious, but achievable, development agenda articulated in Kenya Vision 2030. This will require that the country move in a number of critical directions at the same time. The role of the Kenyan state in this process cannot be one of a mere facilitator.

At this crucial stage in the national development effort, and drawing lessons from other economies such as South Africa, Brazil, Chile, China, Malaysia and Singapore, the state will have to play an active role, while avoiding as far as possible and practicable interventions that stifle or minimize the role of the private sector.

The Constitution of Kenya, 2010 alludes to a more activist role for the state in national development efforts. This is discernible from the preamble to the Constitution as well as provisions in Article 10 (relating to national values and principles of governance), Chapter Four (in respect of the Bill of Rights), Chapter 11 (in respect of devolved government) and Chapter 12 (relating to public finance). It is our conclusion therefore that the Constitution of Kenya, 2010 anticipates that the State in Kenya will be a democratic, developmental state. Edigheji (2005) says that a democratic developmental state is one that not only embodies the principles of electoral democracy, ensures citizens' participation in the development and governance processes, but also fosters economic growth and development through the transformation of a nation's economic base by promoting productive, income generating economic activities aimed at improving the welfare of the population⁵. It does this by clearly identifying the areas of or circumstances for intervention. Reform or creation of state corporations in Kenya must consider this. The argument should not be that we have many state corporations. In our view, the position should be what mandate does the state want executed, whether a state corporation or the private sector should execute it, and if it is to be executed by an existing state corporation, whether it should receive that additional mandate or a new one should be created.

The Comprehensive Review of Mandates of Existing State Corporations should bring the menu of mandates in alignment with the provisions of the Constitution of Kenya 2010 as well as the demands of Kenya Vision 2030 and the development priorities being pursued by the Jubilee Administration. It should focus not only on medium term outcomes, but also on the long-term development imperatives of the economy. This review of mandates should ensure alignment with Schedule 4 of the Constitution of Kenya 2010, but also recognise the imperatives of complying with the Preamble, Article 2(5), Article 6(3), Article 10, Chapter 4, as well as Chapters 11, 12 and 13 of the same Constitution.

Government Owned Entities and National Development Mandates

The question of state corporations and achievement of national development mandates is influenced by two issues. First, is the sometimes broad and unclear articulation of mandates, which renders their assessment challenging. Second, is the challenge of achieving a healthy balance between pursuit of commercial objectives and socio-economic development mandates of a state corporation. Implementation of performance contracting, while ensuring enhanced performance of state corporations, has blurred the focus on achieving a healthy balance between these sometimes non-complimentary objectives. Adoption of **sector performance standards**, aimed at integrating and aligning sectors to Kenya Vision 2030, has not yet achieved the traction required. There is doubt about sector commitment to achieve or focus on these goals.

For state corporations to be geared towards achievement of national development goals and a healthy balance maintained between commercial objectives and their developmental mandates, there should be developed a clear and enforceable **Framework for Strategic Plans and Annual Performance Plans for Government Owned Entities (GOEs)** that would facilitate alignment of corporate mandates with national development projects, linked to the Medium Term Expenditure Framework, the Medium Term Plan, and Vision 2030. It would streamline the current strategic planning process to ensure stronger support for the existing performance-contracting regime, with clear accountabilities for performance at all levels.

Transition to Devolved System of Governance

The Constitution declares National and County governments as distinct but interdependent levels of government and functions for each level assigned at the Fourth Schedule. In performance of their functions the two levels of government are required to respect functional and institutional integrity of each other and assist and support each other as appropriate. At Article 189 (2) the two levels of government may cooperate through joint committees. A function that is not assigned to either level of government is deemed to be a function of the National Government. Considering that Majority of Government owned entities were created before August 2010 a number of Government owned entities that carry functions assigned to county governments while others carry functions assigned to both levels of government. It follows therefore that there are state corporations that:

- i. should continue as entities owned by the National Government;
- ii. shall transit to entities owned by county governments;
- iii. shall transit to entities owned jointly by a number of county governments as joint authorities;
- iv. may be owned jointly between national Government and one or more County Governments; and
- v. should cease as their functions shall be taken over by county governments.

Transition to county ownership and mode of transfer

State Corporations in their current form are National government investments where tax payers' money has been spent. Section 4(1) and (2) of the Public Finance Management Act 2012 empowers the Cabinet Secretary responsible for finance to, with the approval of Parliament, declare a State Corporation to be a National Government Entity or declare it not to be a National Government entity.

Interface of State Corporation and County Governments

State Corporations and State Agencies undertaking functions of the National Government will have jurisdiction across counties.

State Corporations: The Policy Issues and Challenges

Performance of the state owned enterprises has been a matter of on-going concern in an environment of resource scarcity and mounting needs. The critical policy issues and challenges afflicting SCs in Kenya, including:

1. Lack of clarity on the role that State Corporations should play in the economy. This is compounded by the apparent differences in opinion in respect of the exact role of the state in the national development effort;
2. Poor linkage of State Corporations activity with the national development goals;
3. Conflicting definition of what a state corporation is in the Kenyan context compounded by multiple legal and regulatory regimes creating significant ownership and oversight challenges;
4. Inadequate policy and policy coordination leading to poor definition of mandates, conflicts in mandates, as well as fragmentation of mandates that facilitate the proliferation of poorly resourced State Corporations. It also affects the facilitative role of the state in ensuring effective private sector development that supports the national development effort;
5. Poor governance leading to resource loss and burdening the public purse, including a multitude of legal and institutional frameworks that generate multiple reporting and

accountability lines, compounding the challenge of effectiveness of Boards and Chief Executive Officers;

6. A number of Boards have been weak and/or ineffective, leading to failure to provide strategic direction, facilitating their emasculation;
7. Weak human resource and institutional capacity to attract and retain the skill sets needed to drive performance;
8. Lack of a clear government policy in respect of government linked companies;
9. Lack of clarity as well as abuse in the process of establishment and dissolution of government owned entities leading to lack of an accurate database on the number of SCs; and
10. An inadequate performance management framework that effectively links performance of SCs to national development goals and fails to adequately link individual performance to institutional performance.

Dealing with these challenges becomes important as the nation seeks to grapple with the imperative of transformation in the context of the Constitution of Kenya 2010.

PART 2:
TRANSFORMATION FOR
INNOVATION AND
EFFECTIVENESS IN
GOVERNMENT OWNED
ENTITIES

CHAPTER FOUR

POLICY AND LEGAL FRAMEWORK FOR GOVERNMENT OWNED ENTITIES

Background

The State Corporations Act Chapter 446 enacted in 1986, for the first time created a regulatory framework for the management of state corporations in Kenya. Its main goal was that of controlling and regulating state corporations. Consequently, it created an institutional framework with many actors, a reality that tends to undermine the effectiveness and efficiency of state corporations. The Act created roles for the Presidency, parent ministry, the Treasury, Board of Directors, State Corporations Advisory Committee, and the Inspectorate of State Corporations, State Corporations Appeal Tribunal amongst others. Some of these roles have over the years proved detrimental as they have become obstructive to efficient operations of State Corporations. At the same time, the problems, which the Act was meant to address, have persisted. Notably, there has been problems with; definition, ownership, establishment, mergers and dissolution, staffing, rewards and incentives, and governance and oversight.

For most of the state corporations, they are guided by individual enabling legislation and legal notices in their operations. Thus, currently each state corporation (SC) operates within the legal instrument under which it is established, and provisions of the State Corporations Act, Chapter 446 of the Laws of Kenya. The situation is however different for SCs operating under the Companies Act Chapter 486, the Banking Act Chapter 488 and Insurance Act Chapter 487. SCs operating under the Companies Act, Insurance Act and Banking Act are required to comply with requirements therein as well as those of the State Corporations Act. Those that are listed on the Nairobi Securities Exchange are also required to comply with Capital Markets Act Chapter 485A and Capital Markets Authority Regulations. In this regard, governance requirements from various laws are often at conflict with adverse effects on decision-making processes, while obtrusive compliance requirements affect efficiency.

Accordingly, a review of the legislative framework directly impinging on SCs is critical for developing an understanding of how legislation affects the performance of SCs and to suggest reforms to this legislative framework to make it more effective. The aspects of the legislative and institutional framework that are the most significant relate to the legal regime itself, establishment of SCs, ownership rights and responsibilities, oversight framework and policy governance.

This chapter therefore endeavours to examine the policy and management challenges being experienced in SCs in Kenya as currently organised.

Policy Development and Implementation

State Corporations are created to further the Government's broad policy goals, be they strategic or purely commercial. In Kenya currently, policy making is vested in the Cabinet. In the past, line Ministers used to issue policy directives of routine nature to GOEs within their sectors. Some of these interventions were often contradictory, unclear or inadequate. At times, there was no coordination between the line ministry responsible for policy making and the shareholding ministry (The National Treasury). This eventually undermined effective policy implementation, performance and even the financial sustainability and viability of the commercial GOEs. At times the National Treasury also issued policy directives for GOEs, as the owner, but which contradict the policies of the line Ministry thereby providing a potential governance challenge.

Global Practices on Policy Development and Implementation

In most jurisdictions, policy making for non-commercial GOEs rests with the Cabinet or Presidency while implementation of the policies is vested in the sector ministries. This is the case in New Zealand, France and Namibia. In some other jurisdictions, a specialised Department is responsible for policy implementation in SOEs (DPE in South Africa and SASAC in China). In instances where holding Companies have been established, most jurisdictions have tended to vest fully the mandate of policy making and implementation in the holding companies. This is the case in Singapore (TEMASEK). However the policy development and implementation powers of the holding company are still subject to Cabinet and the veto powers of the President as is evident in the case of Singapore.

There is a widespread trend internationally towards clearly distinguishing and separating Government's different roles and interests as owner, policy-maker and regulator, such as in China, New Zealand, Australia, the UK and France. There is a need to reduce the number of Government institutions playing an ownership/shareholder role, as well as to separate the ownership/shareholder role from the policy making and regulatory role from residing in the same department. This should be given legislative treatment in line with the Namibian, New Zealand and Australian models, where a portfolio ministry plays the policy role, and the ownership/shareholder role is played by another Government institution, mostly the National Treasury while regulatory oversight is vested in another Government Institution.

Recommended Policy Framework

It is recommended that there should be a clear distinction between commercial and non-commercial functions in GOEs. Where non-commercial activities are embedded in the activities of a commercial, but strategic State Corporation, this will be treated as public service obligations that should be financed adequately by the Government.

Table 4.1: Policy Coordination Framework for Government Owned Entities

GOE / INSTITUTION		AGENCY RESPONSIBLE FOR PROVIDING POLICY COORDINATION
Government Investment Corporation (GIC)		The President
National and County Agencies Oversight Office (NACAOO)		The President
State Corporations	Pure Commercial SC	Government Investment Corporation (GIC)
	Strategic Commercial SC	Sector Ministry

GOE / INSTITUTION	AGENCY RESPONSIBLE FOR PROVIDING POLICY COORDINATION
State Agencies	Sector Ministry
County Corporations	The Governor
County Agencies	Sector Department

In addition there should a clear separation between policy, regulatory and service delivery functions and the entities that undertake those functions. The fusing of regulatory and sector development functions was considered appropriate and should be applied on a sector by sector basis.

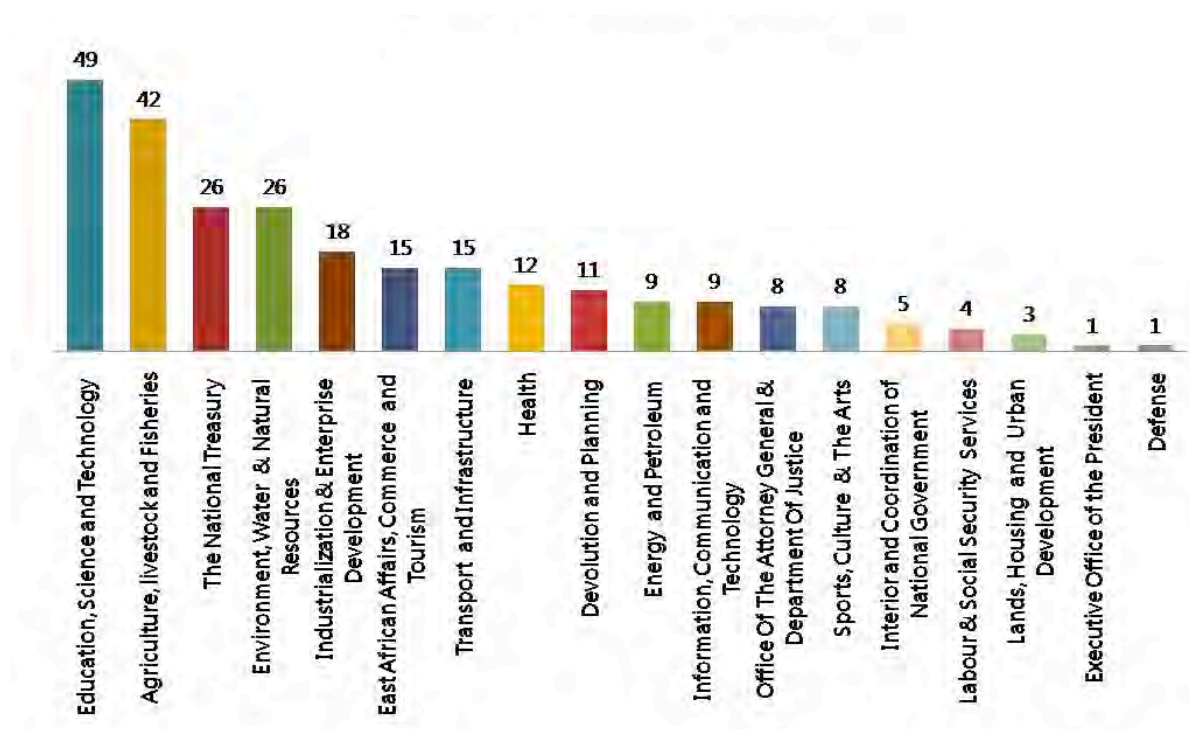
Although it is recognized that all policy decisions emanate from the Cabinet and Parliament at the National level and County Executive and Assemblies for the Counties, various other Agencies take responsibility for implementation of such decisions. So as to obviate instances of confusion in policy making and implementation, it is recommended that policy related oversight be exercised as indicated in Table 4.1.

Current Inventory of State Corporations

The State Corporations Act Chapter 446 in Section 2 defines the entities currently referred to as State Corporations. Over the years it has become increasingly difficult to determine the actual number of State Corporations as defined by the Act. It was noted that the entities identified as State Corporations by virtue of incorporation included professional bodies which are actually members' bodies. These bodies should never have been considered as State Corporations and financed by the public and in this regard they should be dropped from the inventory. The lack of a designated, centralised and authoritative database compounds this challenge.

Government departments also keep inventories of State Corporations in their dockets. The inventories kept by the National Treasury as the entity that exercises ownership entity, the Inspectorate of State Corporation, and State Corporations Advisory Committee were reviewed to come up with harmonized inventory. The Office of the Attorney General was also requested to provide information on bodies corporate existing in the statute books given the role of the office in the establishment of State Corporations.

Chart 4.1: Number and Current Classification of State Corporations by Ministry



The exercise concluded with a list of two hundred and sixty two (262), as illustrated in Chart 4.1. The detailed list of these SCs, including their mandates and establishing statutes is provided in Appendix 4.

Current Classification

In the past the efforts at classification of current State Corporations was for purposes of determination of remuneration. In 1992 State Corporations were placed in various classes ranging from “A” being the highest to “F” as the lowest. In 2004 the Government re-categorized State Corporations once more for purposes of remuneration into: financial institutions, commercial/manufacturing; regulatory bodies; public universities; research and training institutions; service corporations; regional development authorities and; tertiary education and training institutions. The regulatory regime and administrative framework however remained intact.

Recommendations

The current approach to management and classification has been examined and the problem traced to the existing definition. **In this respect, the entities previously known as State Corporations shall henceforth be known generally as Government Owned Entities (GOEs).**

Definition of Government Owned Entities

GOEs have been clustered into four (4) broad classifications as defined below:

State Corporations

In order to remove ambiguity in definition and facilitate differentiated regulatory regime for Government Owned Entities a “State Corporation” shall be an entity howsoever incorporated, that is solely or majority owned by the government or its agents for commercial purposes. A commercial function for the purpose of this policy is a function:

- i. the dynamics of which are governed by a competitive profit driven market:
- ii. that can be performed commercially but serves a strategic socio-economic.

State Corporations therefore shall include;

- i. Commercial State Corporations; and
- ii. Commercial State Corporations with strategic functions to be defined through the national development planning process.

These entities shall be incorporated under the Companies Act Chapter 486.

State Agencies

There are other incorporated entities outside the mainstream civil service established for purposes of public service delivery. These bodies are agencies of the Government established for specific purposes and shall be known as State Agencies. For the avoidance of doubt a State Agency shall be an entity howsoever incorporated by the Government to undertake a specific Government objective in delivering public services including regulation. These shall include:

- i. Executive Agencies
- ii. Independent Regulatory Agencies
- iii. Research Institutions, Public Universities and Tertiary Education Institutions

A schedule of the existing State Agencies is provided at Appendix 5.

County Corporations

A County Corporation is an entity howsoever incorporated that is solely or majority owned by a county government or its agent for commercial purposes. A commercial function for the purpose of this policy is a function:

- i. the dynamics of which are governed by a competitive profit driven market;
- ii. that can be performed commercially but serves a strategic socio-economic objective as from time to time defined by the President.

County Agencies

A County Agency is an entity howsoever incorporated by a county government to undertake a specific strategic government objective in delivering public service. Such objective includes regulation and service delivery. These include:

- i. Executive agencies; and
- ii. Joint County Authorities

Exemptions from the Definition of Government Owned Entities

For purposes of this policy and consequential legal provisions, the following institutions shall not be considered to be Government Owned Entities (GOEs):

- Cabinet Secretary to the Treasury Incorporation Act
- Co-operative Societies
- Building Societies
- Government Linked Corporations or any other Corporations in which the government, its agents or combined ownership with its agents is less than fifty percent (50%) of the issued share capital
- State Organs as defined in the Constitution
- Constitutional Commissions and Boards
- Independent offices established by the Constitution

- Business and Professional Associations, even if established by law
- Civil society, volunteer organizations and Trade Unions, even if established by law
- Associations of Universities and Colleges
- Witness Protection Agency

Reclassification of Government Owned Entities

In line with the proposed definition it is recommended that the GOEs be reclassified as State Corporations; Executive Agencies; Independent Regulatory Agencies; and Research, Public Universities, Education and Training Institutions as illustrated in Table 4.2.

Table 4.2: Reclassification of Government Owned Entities

#	Type classification	by Sub classification	Numbers
1	State Corporations	Purely Commercial	34
		Strategic Commercial	21
2	State Agencies	Executive Agencies	62
		Independent Regulatory Bodies	25
		Research Institutions, Public Universities and Tertiary Education Institutions	45
	Total		187

The 187 reclassified entities in accord with this definition are presented at Appendix 4.

Legal Framework for Government Owned Entities

Policy Issues and Challenges

A carefully developed and well-designed legal framework for GOEs is essential to ensure the viability and efficiency of these enterprises. The legislative environment for GOEs in Kenya is characterized by a myriad of legislation that is overlapping, conflicting, and fraught with duplicated provisions that lead to confusion in interpretation and application. Enactment of the State Corporations Act, Chapter 446 in 1986 for the first time created a regulatory framework for the management of state corporations. Before this the sector was largely guided by individual enabling legislative and legal notices. As a result, each GOE operates within the legal instrument under which it is established, and provisions of the State Corporations Act. The review has identified the following core issues and challenges with existing legislations and regulations:

- absence of a single, overarching law;
- adverse effect of the multiplicity of laws governing GOEs; and
- burden of compliance with existing sometimes conflicting legislations (whether perceived or real)

Global Best Practices Relating to Legal Frameworks

Legislation underpins the relationship between the State and its GOEs in countries throughout the world, and defines the rights and responsibilities of these two key stakeholders. Many nations subject such legislation to periodic review in order to align their legislative frameworks to international, regional and local developments.

Refinement of legislation is also aimed at resolving challenges that arise from the practical impact of legislative frameworks on GOEs as well as their relationship with Government. In their reviews of legislative frameworks, most States review the impact of these frameworks on the performance of GOEs, and refine their legislation in ways that can contribute to enhancing performance. In particular, States refine their legislative frameworks to enhance, among other things:

- Corporate governance of GOEs;
- Their rights and role as owner of GOEs; and
- The oversight functions over GOEs.

The review of legislative frameworks in many countries has given rise to coherent legislative frameworks for GOEs that contribute to efficient and effective performance while enhancing the respective Governments' ability to monitor their performance. An international comparative review of the legislative and institutional structures in five countries was conducted in examining the impact of the current GOE legislative frameworks in Kenya. These countries included South Africa, China, Singapore, Malaysia, New Zealand and UK. The choice of these particular countries was based on the similarities in GOE governance (from a legislative point of view) between the selected countries and Kenya. Some of the key features of the legislative instruments in these countries were:

- An overarching Government Owned Entities Act, regulating all GOEs;
- Clarity and separation of roles of Government as owner, policy maker and regulator;
- Corporate governance guidelines defining roles and responsibilities of key stakeholders;
- Ownership frameworks that define the rights of Government as owner of GOEs; and
- Oversight frameworks that define the responsibilities and roles of key stakeholders

Recommended Legal Framework

Single Overarching Law

Based on the review, a compelling need for enactment of an omnibus Government Owned Entities law was established. This single overarching law governing all national state corporations and agencies as well as county corporations and agencies must:

- Supersede all current legislation governing GOEs;
- Reduce the current burden of compliance with multiple laws and regulations; and
- Include all subsidiaries of Government Owned Entities (GOEs).

This will call for a repeal of the State Corporations Act, Chapter 446 of the Laws of Kenya. It will also entail a review of all individual enabling legislation, recognizing the unique characteristics of state corporations, state agencies, county corporations, and county agencies. The law will provide for an institutional framework that promotes accountability, good corporate governance, and results orientation without stifling operational autonomy while operating within the requirements of the Constitution. The proposed legislation should aim to address the duplication, conflicting provisions, different founding legislation, and sometimes-serious omissions. The legislation should provide for:

- i. Establishment of a holding company known as Government Investment Corporation (GIC) which shall be incorporated by the National Treasury under the Companies Act for purposes of owning and overseeing all state corporations;
- ii. Establishment of the 'National and County Agencies Oversight Office' (NACAOO) whose role will be to provide oversight for all state agencies, county corporations and county agencies;
- iii. The extent and nature of ownership, corporate type as well as classification;
- iv. The protocols and processes for establishment and dissolution of Government Owned Entities (GOEs) in all spheres of Government;
- v. A determination of the role and responsibility of the owner/executive authority;

- vi. Prohibition of the creation and proliferation of non-compliant structures;
- vii. Outline principles of performance framework to measure and evaluate the performance of GOEs;
- viii. Develop a corporate governance framework for all GOEs, which should:
 - Embrace the Developmental State or County agenda and the unique positioning of GOEs;
 - Encompass principles of ethical leadership, transformative corporate citizenship, service delivery, viability and sustainability; and
- ix. Development of an ownership framework for GOEs;

Procurement and Disposal of Goods and Services

Policy Issues and Challenges

A 2005 Independent Procurement Review, conducted jointly by the GoK and the European Union, identified several critical problems with Kenya's procurement system. The review found weak oversight institutions, a lack of transparency, poor linkages between procurements and expenditures, delays and inefficiencies, and poor records management. The GoK sought to improve its public procurement systems by enacting the Public Procurement and Disposal Act and creating the Public Procurement Oversight Authority (PPOA). It gazetted regulations implementing the Act on January 1, 2007⁶.

While the PPDA was meant to address the challenges identified, experience suggests that the results have not entirely been as expected. The Public Procurement and Disposal Act, 2005 (PPDA) in Kenya provides a standardised framework for the procurement of goods and services across all public sector entities. This one size fits all approach has created challenges for many Government Owned Entities. A review⁷ conducted by the PPOA, while recognising some strengths, identified a number of challenges including the cost of the procurement process, the long time to procure/reaction time to business opportunities; challenges of negotiation with suppliers; external approval processes (to PPOA) and the issue of resale of branded items.

With the Constitution of Kenya 2010, Article 227 of the Constitution of Kenya, 2010 has established a new framework to guide the public procurement and disposal process. This is in the context of ensuring the GOEs are agile enough to respond to opportunities in the market to grow value for the Kenyan public.

Recommended Framework for Procurement and Disposal of Goods and Services

The Taskforce therefore recommends that the existing Public Procurement and Disposal Framework be urgently reviewed and reformed to adhere to the provisions of Article 227 of the Constitution of Kenya 2010 and at the same time ensure that State Corporations are freed from restrictive provisions that would hinder their ability to compete effectively in their various spaces.

CHAPTER FIVE

INSTITUTIONAL FRAMEWORK FOR GOVERNMENT OWNED ENTITIES

Background

In Kenya's GOEs, the Government performs multiple responsibilities; the main three being roles of owner, policy maker and regulator, and these often compete. As the owner of GOEs, Government is an owner/shareholder concerned with returns on investments and other imperatives that are in the interests of the economy at large, such as infrastructure development. It is also a policy maker overseeing the implementation of policies and delivery of services, including social contributions such as skills development, transformation and job creation. Government is also the regulator supervising governance practices and safeguarding the strategic interests of the citizenry.

These multiple roles confuse GOEs, which are often unable to determine what is expected from them by Government as owner, policy-maker or regulator. When GOEs receive directives from their ownership/shareholder institution it is unclear whether they are in pursuance of ownership interests, in pursuance of Government policy or regulatory interests. Often times, the role and responsibilities of different Government departments/institutions (in relation to GOEs) are not clearly delineated with the resultant confusion of the rights of the departments and the reporting and accountability lines for GOEs. It is therefore imperative to clearly delineate and assign the four roles of establishment, ownership, policy implementation and regulatory oversight.

Establishment and Dissolution Government Owned Entities

Policy Issues and Challenges

Currently GOEs are established through an Act of Parliament, direct incorporation under the Companies Act Chapter 486 or through a legal notice. Whereas the law makes provision for adequate consultations under Section 27 (1) (b) of the State Corporations Act Chapter 446, this has not been adhered to resulting into proliferation of GOEs where departments and/or statutory boards of ministries have been often transformed into GOEs without provision of clear policy rationales. In other cases existing GOEs have, without consultation, incorporated subsidiary companies which have at times proved unviable and become financial burdens to the exchequer. Examples include the Kenya Tourist Development Corporation (Kenya Safari Lodges & Hotels, Golf Hotel, Kakamega; Kabaranet Hotel; Mount Elgon Lodge and Sunset Hotel, Kisumu), Kenya Ports Authority (Kenya National Shipping Line), and Kenya Wine Agencies Limited (Yatta Vines Ltd.).

The proliferation of GOEs has created another problem where, with time, their mandates have either become obsolete, irrelevant, or duplicate functions. This has created a need for reorganisation of GOEs performing similar or irrelevant functions or that have mandates best implemented by state departments. However, the absence of clear procedures under the law presents one of the challenges. It is therefore necessary that such a procedure for establishment and dissolution of GOEs be developed to enable resolution of this challenge.

Recommended Framework for Establishment and Dissolution of GOEs

To avoid the current scenario that has created confusion, it is imperative for all agencies designated to exercise ownership to ensure that prior approval is obtained for:

- establishment or participation in the establishment of an entity;

- participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- acquisition or disposal of a significant shareholding in a GOE;
- acquisition or disposal of a significant asset;
- commencement or cessation of a significant business activity; and
- a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

Table 5.1: Establishment and Dissolution of Government Owned Entities

ISSUE	RESPONSIBLE AGENCY
Establishment of Holding Company aka GIC	To be incorporated by the Treasury under the Companies Act.
Establishment of State Corporations	GIC to incorporate under the Companies Act
Establishment of NACAOO	It will be established by the President as an Independent Office in terms of Article 132(4)(a) of the Constitution of Kenya, 2010
Establishment of State Agencies	The relevant sector Ministry shall develop rationale and feasibility, in consultation with the National Treasury after which it will be presented for appraisal by NACAOO prior to presentation to Cabinet for consideration and approval. The President may then through legal notice establish the State Agency
Establishment of County Corporations and Agencies	The relevant sector Department shall develop rationale and feasibility, in consultation with the County Treasury, after which it will be presented to NACAOO for appraisal prior to presentation to the County Executive for consideration and approval. The Governor may then through legal notice establish either the County Corporation or County Agency

Powers to establish GOEs shall be exercised as illustrated in Table 5.1

Ownership

Policy Issues and Challenges

The distinction between the role of the ownership/shareholder representative (i.e., Government) and the role of the board has been hazy and needs to be defined clearly. This can only be achieved through the creation of a clear governance framework that stipulates comprehensive and clear principles for the exercise of the ownership function. Clear rules of engagement, and rights and responsibilities, will ensure that there is no violation of good corporate governance principles that negatively affect the effective delivery of GOEs' mandates and the achievement of the State's developmental objectives. The obligations and limits of the Boards of GOEs should be made clear based on the Principal-Agent theory.

Exercising an ownership role requires knowing what is owned. It has been quite evident that the Government does not know exactly what it owns. This is in part because there is no single repository or centralised source of all information on GOEs through which Government can access information about how many GOEs exist, what its level of ownership is in specific GOEs, their funding history and data, and their board status. Nor is there access to the performance and operational data on each of these institutions. Whatever is available and accessible as information on GOEs is found in different Institutions.

The absence of a central database poses a challenge and constrains Government's ability to exercise ownership and oversight responsibilities. A centralised database for GOEs is a key instrument through which the State as an owner can be informed on what it owns and the extent of ownership of such entities. For instance, France maintains a very effective system of SOE data supported by a comprehensive reporting system on French SOEs. The *Agence des participations de l'Etat (APE)* reports on all SOEs in meticulous detail. It lists all its SOEs

and it does so per sector and per extent of shareholding. It also details the total asset base, equity and liabilities, and income of its entire SOE portfolio on a common platform. APE can also report on the total return on capital (RoC), return on equity (RoE); operating margin, and the net debt/EBIDTA or net debt/equity attributable to each SOE. The APE reports on the total profit made by the SOEs, the dividend paid to it by each SOE, and the total number of employees employed by all these entities (including subsidiaries), as well as detailing their gender equity statistics. These are the key responsibilities of any institution performing ownership functions.

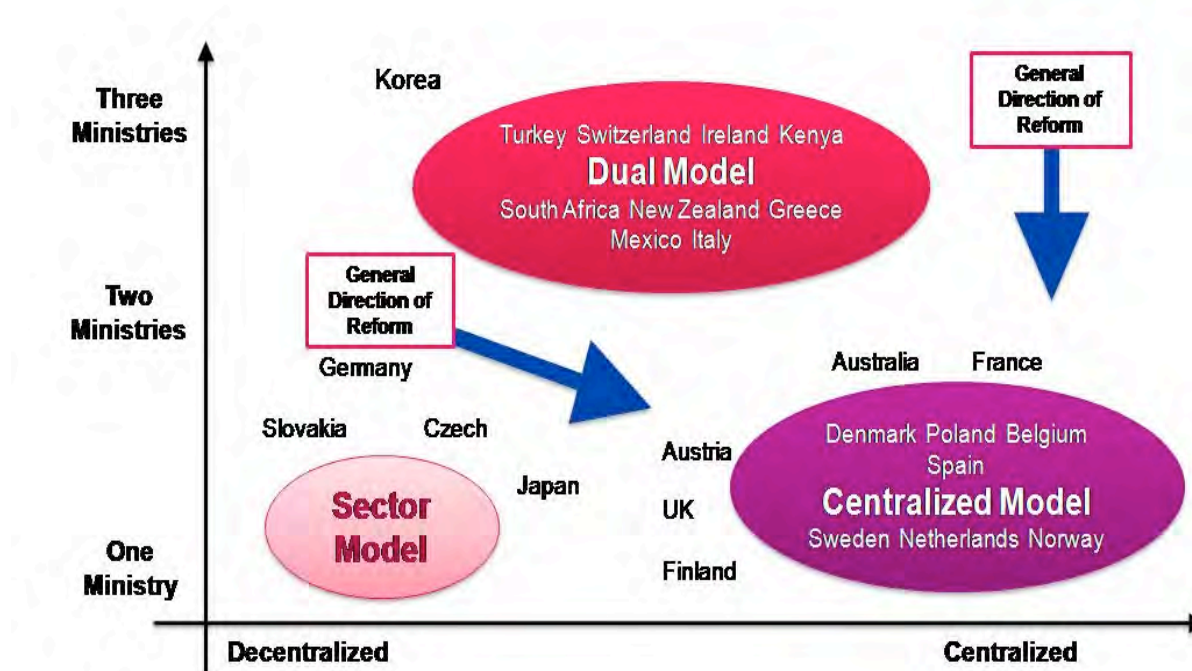
Ownership Model and Global Practices

There are different ownership models in different countries. Some have adopted the decentralized model; others a dual model; still others use a centralised model.

In the decentralised model, SOEs are under the responsibility of sector ministries. This is the case in South Africa, where a multitude of Government institutions from all spheres exercise the ownership function.

The dual ownership model differs from the decentralized model in that there are two ministries – sector ministries and a ‘common ministry’, usually the Ministry of Finance – responsible for exercising the ownership function. There may be a dual responsibility about certain specific aspects of the ownership role, for example, where both ministries have the right to nominate representatives to the board of directors. This is the current case in Kenya and also the case in Mexico, where representatives from the Ministry of Finance and Public Credit and the sector ministries sit on the board of State-owned companies. In New Zealand, the sector ministry and the common ministry each own half of the State’s shares in SOEs. In Korea, at least three ministries exercise the Government’s ownership rights in SOEs.

Chart 5.1: Organization of the State Ownership Function



Source: OECD, 2005

The centralised model, which has emerged more recently, is characterised by a strong centralization of the ownership function. In this model most commercial GOEs are put under the responsibility of one ministry or agency. In some cases this is the Ministry of Finance (Denmark, the Netherlands, and Spain), or the Ministry of Industry (Norway and Sweden), which have the most important GOEs under them. In a few cases, a specific agency has been

established, that is more or less autonomous, usually reporting to the Ministry of Finance (as in the case of France). In some other instances, the ownership of most or a specific list of GOEs have been transferred to one or several holdings which are in turn owned by the State and under the responsibility of a single ministry, mostly that responsible for finance. This is the case of TEMASEK in Singapore.

The following are the main advantages and rationale for a centralised model of ownership, as it:

- makes possible the separation of the ownership function from the policy function;
- facilitates a greater unity and consistency of the ownership policy, such as in implementing unified guidelines regarding investment
- has been a major force toward the elaboration of centralised or aggregate financial reporting on GOEs; and
- allows for centralizing competencies and organising ‘pools’ of experts in relevant matters, such as financial reporting.

Very few advantages were identified in international experience that had the other ownership models. The main disadvantage of a decentralized ownership model is the greater difficulty in making a clear separation of the ownership functions from other State functions, particularly its regulatory and policy roles. No advantages were identified in having a decentralised model. Internationally, the decentralised (multiple) ownership model is the most traditional one, and the dual model is the least prevalent. The centralised model has been on the increase more recently, while a slight majority of countries use the multiple-ownership model. A few countries use a combination of more than one model. Accordingly, there is no global ‘one size fits all’ when it comes to the appropriate ownership/shareholder management model.

Recommended Ownership Framework

Therefore in terms of ownership, the Taskforce has recommended a centralized ownership model as follows:

- At the national level: the ownership of all State Corporations and agencies should remain with the National Treasury as per the constitutional mandate. The shareholding role for commercial entities shall however not be exercised directly by the National Treasury but through a Holding Company (Government Investment Corporation - GIC) which the National Treasury shall incorporate under the Companies Act.
- At the County level: the ownership of all County Corporations and Agencies should remain with the County Treasury as per the constitution of Kenya and the County Governments Act.

The above framework is specified in Table 5.2 below:

Table 5.2: Ownership Framework for Government Owned Entities

INSTITUTION / GOE	OVERSIGHT AGENCY
Government Investment Corporation (GIC)	The National Treasury
National and County Agencies Oversight Office (NACAOO)	The National Treasury
State Corporations	Government Investment Corporation (GIC)
State Agencies	The National Treasury
County Corporations & Agencies	County Treasury

Oversight

Background

Oversight refers to overseeing of the affairs, practices, activities, behaviour and conduct of GOEs in order to determine whether or not their affairs and business practices are conducted in the manner expected of them and in accordance with all normal commercial, legislative and other prescribed or agreed norms. This includes the review, monitoring and oversight of the management of GOEs; their strategic and business planning; their conduct of business operations; and their reporting thereon and accounting thereof. In addition, oversight includes reviewing and monitoring whether GOEs are effectively managed by their executive management and staff and that the assets and goodwill are properly protected and preserved.

Policy Issues and Challenges

In Kenya, many policy and shareholding Government institutions also exercise an oversight role on GOEs and, as a result, duplicate other oversight structures. Currently oversight is undertaken by the following Government Institutions:- Ministry of Finance: Department of Government Investments and Public Enterprises (DGIPE); Several line (parent) Ministries; State Corporations Advisory Committee (SCAC); Inspectorate of State Corporations (ISC); Performance Contracting Secretariat (PCS); Efficiency Monitoring Unit (EMU); Salaries and Remuneration Commission (SRC), et al. The oversight function is just as adversely affected as corporate governance and ownership are by the lack of a coordinated and unitary oversight framework.

Another argument in favour of developing an overarching oversight framework arises from the effects of a multiplicity of reporting institutions. GOEs find themselves accountable to the institutions mentioned above which require a myriad of information at times of conflicting nature. This provides numerous inefficiencies for GOEs because they have to meet the different requirements of each of these authorities on demand. In addition to the statutory monthly and quarterly reports, entities are frequently requested to provide the same reports on an ad hoc basis in different formats, often requiring extensive adjustments of templates, which involves countless hours of work.

The manner in which GOEs are held to account and required to be transparent can deviate from the ownership model. Two examples from international experience are of relevance here. In Finland, the Prime Minister's Office took ownership of the majority of GOEs. Only SOEs with special tasks were left with line ministries. An Ownership Steering Department was established in the Prime Minister's Office to develop SOE strategies. This steering committee is responsible for commercial/ business entities. The relocation of the ownership of the major SOEs was intended to separate ownership and regulation. In New Zealand, the oversight function is centralised in the Crown Company Management Advisory Unit (CCMAU, now COMU) within the Prime Minister's Office. The Minister of Finance focuses on financial reporting and the 'sector ministries' (through COMU) adopts a commercially-oriented perspective with a primary emphasis on ensuring that SOEs are successful companies. In addition, sector ministries, through the COMU, take the lead in monitoring performance and have sole responsibility for board composition.

In Kenya, as noted above, many institutions play this role. Inevitably, each institution does so in a manner that it deems prudent, and this leads to a multiplicity of different, fragmented oversight practices by Government institutions. In addition, what constitutes oversight and intervention is interpreted and understood differently by institutions of the different sectors of the Government. 'Ownership' and 'oversight' are often interpreted to mean the same thing. This is not the case.

There is a huge disparity in oversight skill levels in various ownership units. This means that the capacity to conduct oversight is uneven across Government institutions. In addition, Government institutions overseeing GOEs play a number of roles simultaneously, such as

policy-making, oversight, regulation, etc. The capacity of these institutions to do so is limited because the resources are stretched and straddle these many roles. This gives credence to the separation of these different Government roles in order to ensure that the oversight function receives focused, well-resourced and capacitated attention.

Recommended Oversight Framework

Accordingly, it is recommended that unitary oversight be exercised for Kenya's Government Owned Entities as shown in Table 5.3.

Table 5.3: Oversight Framework for Government Owned Entities

INSITUATION/GOE	OVERSIGHT AGENCY
Government Investment Corporation (GIC)	The President
National and County Agencies Oversight Office (NACAOO)	The President
State Corporations	Government Investment Corporation (GIC)
State Agencies	NACAOO
County Corporations & Agencies	Governor & County Executive based on guidelines, standards and norms established by NACAOO

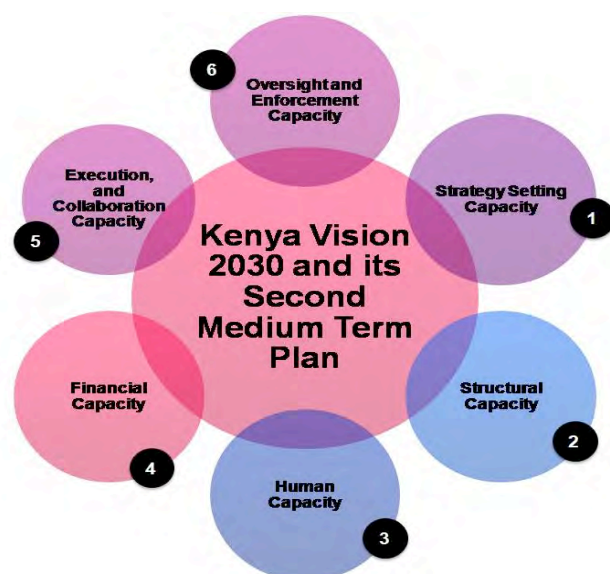
In all instances, the Office of the Auditor General shall provide statutory audit to all the above institutions save for the fact that in the case of state corporations the Auditor General may appoint private auditors for purposes of expediting the audit process.

Reorienting of Oversight Capacity and Capability

Policy Issue and Challenges

As Kenya moves towards achieving Vision 2030, one of the underpinning principles is the need for business unusual. This is reinforced by the theme Kenya Vision 2030 as well as the transformational focus, underpinned by the demands of the Constitution of Kenya 2010. They envisage a reorientation and strengthening of the state in execution of its proactive developmental mandate. Accepting the fact that the state will have a major role to play in growing the economy, it will be necessary to focus on the ability of the state to proactively execute its strategic, organisational and technical roles at the national and county levels as illustrated in Chart 5.2.

Chart 5.2: Critical Capacities for Effective Management of Government Owned Entities in Kenya



Source: Adapted from PRC 2013, Volume II

Available literature suggests that these capacities and capabilities are not inherited, but painstakingly built (UNRISD, 2010 and PRC, 2013). As Kenya embarks on transforming the government owned entities, it will be critical that we proactively focus on ensuring that this is achieved. The PRC Report on state owned enterprises in South Africa identified eight drivers that would support this effort, namely strengthening the ability and capability to:

1. set and articulate a common plan and vision and aligning the talents of staff as well as their efforts with the set vision and common plan;
2. generate intelligent strategies to drive measureable changes and outcomes linked to the national development challenges;
3. set up performance management systems that will drive discipline in delivering on mandates by state owned enterprises;
4. proactively deal with corruption as well as comply with regulatory issues;
5. ensure active collaboration with stakeholders, including private sector and civil society;
6. respond to socio-political and economic circumstances;
7. adequately compensate competent individuals committed to the national vision; and
8. operationalise governance systems to implement and enforce strategies

Recommendations

It is therefore recommended that, the Government should:

- In collaboration with all stakeholders actively drive the effort to ensure that there is a shared understanding of and commitment to the national development challenge as well as the expected role of the government owned entities in addressing these challenges;
- Build the capacity to develop and continuously review the overarching strategies in respect of government owned entities by adequately capacitating the responsible institutions, ensuring adequate collaboration between these entities and similar ones in benchmark countries and with international bodies, and targeting capacity and capability development at the national and county levels;
- Immediately appoint a transition committee to oversee the rapid and timely implementation of the recommendations in this report, with the requisite authority and powers and the requirement to report to the President and Cabinet on a monthly basis;
- Undertake a comprehensive review of the human capacity and capability gaps in all government owned entities and develop customized programmes to ramp up these capabilities, starting with those entities in the strategic sectors to the economy;
- Strengthen the financial decision making capacity in the entities having oversight over government owned entities, with a focus on their ability to oversight the application of public private partnerships, dealing with unfunded mandates as well as addressing alternative funding arrangements; and
- Focus on ensuring that government owned entities deliver on the mandates assigned to them through continuous monitoring and benchmarking. To this end, it is recommended that a centralized, real time repository, based on Sector Performance Standards, to act as a single source of information on the performance of Government Owned entities be established. It should be used to create disincentives to collaboration amongst GOEs and address the instinct towards territoriality in their operations.

CHAPTER SIX

GOVERNANCE OF GOVERNMENT OWNED ENTITIES

Background

The performance of GOEs depends to a large extent on the capabilities and performance of its board. In turn, the skills, experience and qualifications of individual directors influence the overall ability and performance of the board. Therefore, selection processes are important in ensuring that boards have high performing directors with appropriate skills. Internationally there is no one common approach for GOE board recruitment. Most genuine GOE reforms in developed and developing countries acknowledge the necessity of strengthening the role of boards. Countries like Australia, the United Kingdom and New Zealand have established brief guidelines in terms of processes and procedures. In Kenya there is need to review the framework for recruitment, selection, appointment, and induction of GOE boards. Current approaches are disparate and inconsistent.

The boards of GOEs should collectively have a mix of skills that are both technical and have operational expertise relevant to the operations of the GOE. They should also have a mix of financial and legal expertise and knowledge of how Government works as well as the Government's regulatory environment.

Policy Issues and Challenges

The Committee identified a number of issues and challenges with the current framework for recruitment, selection, appointment and induction of boards of GOEs. These include:

- absence of a clear framework for recruitment, selection, appointment and induction of boards of GOEs; and
- lack of uniformity in the application of appointment procedures, not least in respect of GOEs.
- inadequate induction processes for board members
- lack of proper skills mix and bloated boards
- shortcomings in the process of appointment of CEOs; and
- lack of understanding of role of boards by board of directors
- fusing of the Chief Executive and Board Secretary roles

Absence of a Clear Framework for Recruitment, Selection, Appointment and Induction of GOE Boards

The legislative framework for recruitment of GOE boards predominantly derives from GOE founding legislation; the State Corporations Act in the Public Sector; and articles of association for those GOEs that are incorporated. There is no single generic legislation that governs the recruitment and appointment procedures and processes. This has led to conflicting provisions and lack of clarity, which undermines the operational effectiveness of GOE. There is no formal framework that holds GOEs accountable. This opens the space for political and self-interested meddling in the appointment and recruitment of boards and executives. In other instances, it often appears to be a case of rules and legislative dictates' in place, but little monitoring by the executive authority/policy, Cabinet Secretary, or other oversight bodies and

stakeholders. The participation of too many role players in the appointment of boards of GOE's creates opportunism, conflicts and leads to great confusion.

Lack of Uniformity in Appointment Procedures

Whilst the founding legislation grants ultimate responsibility for GOE appointments to Cabinet Secretaries, actual responsibility for running the appointment process varies considerably in practice, with the Cabinet Secretary (and the oversight units) having the dominant role in some GOEs and the Board in others. In most cases the Minister has the final say on who should be appointed.

Inadequate Induction Processes for Board Members

Internationally there is recognition of the importance of the induction process of GOE directors. There is also a focus on continuous improvement of the board in general, and of individual directors. In most countries there is a standard template for induction of GOE boards that is used in most of the spheres of Government. In addition to an effective induction programme for directors, there is also the recognition of the need for continuous education so as to continuously equip individual directors and the board in general with the necessary skills and knowledge to run boards of GOEs efficiently. Beyond lack of effective induction programs, there also appears to be inconsistencies as far as on-going and further training for board members is concerned.

Lack of a Proper Skills Mix in Boards and Bloated Boards

Achieving the right mix of talent, skills and experience on boards is critical for businesses. In addition, good corporate governance calls for a proper skills mix in the board for boards to effectively carry out their duties as the minds and wheel of GOEs. An organisation that recruits from the widest pool of talent ensures a diversity of experience and perspective in the boardroom that broadens discussion. Diverse views promote debate and challenge group mentality; they are more likely to encourage consideration of alternatives, take into account more risks, and develop contingency plans. The lack of a proper framework for recruitment of boards has led to lack of the necessary mix of skills and talent in boards of GOEs.

In Kenya as in many other countries, Boards of GOEs tend to be too large, lack business perspective and independent judgment. They may also include an excessive number of members from the state administration and government ministries in boards of GOEs which hinders proper functioning of boards,

To encourage board responsibility and in order for boards to function effectively, they should follow best practices adhered to in the private sector and be limited in size. This is because, experience indicates that smaller boards allow for real strategic discussion and are less prone to become rubberstamping entities.

Shortcomings in the Process of Appointment of CEOs

The practice and process associated with the recruitment and selection of CEOs is applied inconsistently within the GOE arena. The process depends on the preference of the Cabinet Secretary, who can choose to manage the recruitment process internally or delegate the nominations process to the board of a GOE.

Lack of Understanding of the Role of Boards by Board Members

Directors of GOEs just like their counterparts in private companies are required to discharge their legal duties faithfully. These duties are grouped into two categories, namely duty of care, skill and diligence, and fiduciary. One of the legal duties of a board of directors is to act in good faith. This connotes several requirements, including the duty to act honestly and in the best interests of the GOE, to not appropriate the company's opportunities or receive secret profits, and to endeavour to fulfil the purpose for which the GOE was established. They must act in the best interests of the GOE. It is this critical role of boards to act in good faith and act

in the best interest of the GOE so as to drive forward its strategy that some board members tend not to fully understand and/or practice.

Linking Governance to Classification of Government Owned Entities

In the current governance regulatory regime, all state corporations are lumped together and required to conform to generic governance principles. This has not been very helpful in facilitating achievement of specific goals for the state corporations. In this respect, the entities previously known as state corporations shall henceforth be known generally as Government Owned Entities (GOEs). The GOEs shall be clustered into the following four (4) broad classifications for purposes of governance:-

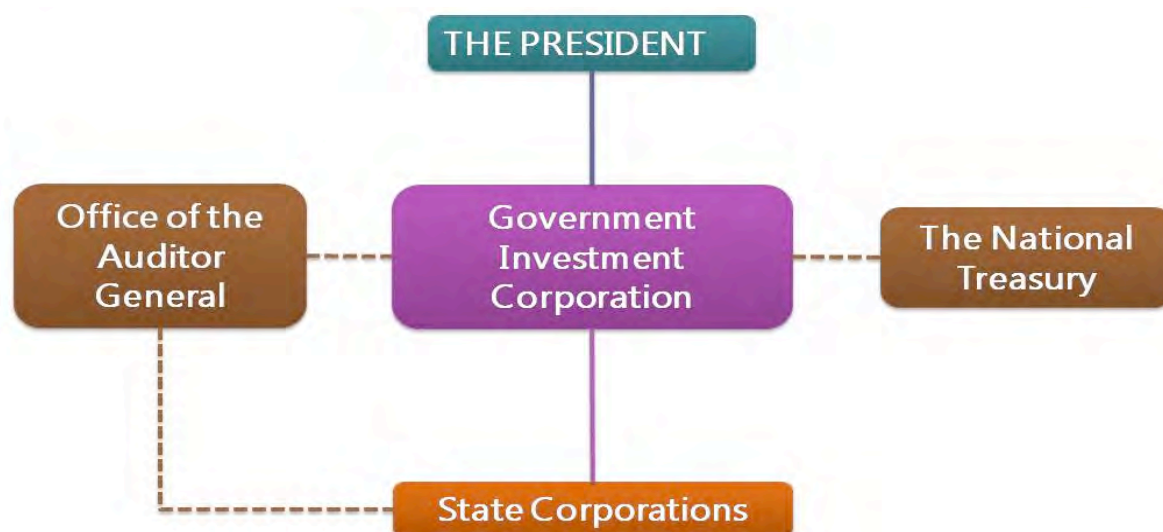
Fusing of Board Secretary and Chief Executive Office Roles

The current practice in many state corporations is to fuse the roles of Board Secretary, with those of the Chief Executive Officer. The primary argument for this has been that it helps reduce costs for the organisation, given that a full time board secretary may not have the range of work to keep them adequately occupied. However, good corporate governance demands that these two roles be separated, as their responsibilities to an organisation are different and will many times conflict⁸ because the CEO has the power to manage the business of the organisation, while a company/board secretary advises the Board in relation to their responsibilities under the law. Fusing these roles has the potential of holding the Board hostage to management.

Recommendations on Governance of Government Owned Entities

It is recommended that for all GOEs, the role of Board/Company Secretary be separated from that of the Chief Executive Officer. In the event that the business of the organisation does not warrant a full time Board Secretary, it is recommended that this role be undertaken through part time Company Secretaries as envisaged under the Certified Public Secretaries of Kenya Act, Chapter 534 of the Laws of Kenya.

Chart 6.1: Proposed Structure for the Government Investment Corporation



Government Investment Corporation (GIC)

The GIC is to be established as a new state corporation, to be a holding company, under the Companies Act, Chapter 486 of the Laws of Kenya. It will be wholly-owned by the Treasury, on behalf of the Government. The GIC's board are to be appointed by President, and it will be accountable to the Executive. While the ownership of SCs resides with the Treasury, GIC shall exercise all ownership and oversight responsibilities for SCs. The Office of the Auditor General will provide periodic audit and evaluation of SCs as illustrated in Chart 6.1.

Table 6.1: Governance Framework for the Government Investment Corporation and the State Corporations

GENERAL PROVISIONS OF GIC AND STATE CORPORATION BOARDS			GOVERNMENT INVESTMENT CORPORATION (GIC)		
<div><div>i. The Board membership shall consist of between seven and nine members</div><div>ii. Should be made in line with Article 27 of The CoK 2010 on equality and freedom from discrimination</div><div>iii. There will be a Company Secretary who will be the Secretary to the Board</div><div>iv. There will be adequate committees of the Board to cover the following functions:<div><div>- Audit and Risk</div><div>- Governance and Human Resources</div><div>- Technical / Development</div><div>- Finance and Investments</div></div></div><div>v. Terms of Directors will be staggered to ensure a smooth succession</div></div>			<div>Functions:</div> <div><div>i. Provide to Cabinet the feasibility for the establishment, merger or dissolution of State Corporations.</div><div>ii. Play the role of investor on behalf of the government in all State Corporations and Government Linked Corporations (GLCs).</div><div>iii. Maintain an inventory of all SCs, including data on their Directors and staff, assets and portfolio</div><div>iv. Implement Government investment policy in all SCs</div><div>v. Implement Government dividend policy in SCs</div><div>vi. Determine terms and conditions of service for Boards of Directors of SCs</div><div>vii. Develop guidelines for Terms and Conditions of Service for employees of SCs</div><div>viii. Develop a dashboard to monitor performance of SCs on real-time basis</div><div>ix. Ensure that Boards of SCs have adequate capacity to run their institutions</div><div>x. Guide strategy, risk, performance and sustainability in SCs</div><div>xi. Appoint the Chief Executive Officer for GIC and establish a frame- work for the delegation of authority</div><div>xii. Appoint Chairpersons and Directors of the Boards of SCs from an established and continuously updated database of eligible and ineligible persons</div><div>xiii. Provide oversight to State Corporations</div></div>		
GIC BOARD APPOINTMENT, QUALIFICATION AND PERFORMANCE MANAGEMENT					
	Appointment	Qualification, Skills, Experience and Board Mix	Tenure	Remuneration	Performance Management
CHAIRPERSON OF GIC	The President	<div><div>• Master’s Degree</div><div>• Experience as a Board member for not less than 5 years</div><div>• At least 10 years’ experience in top management of a public or private institution</div><div>• Meet requirements of Article 10, Chapter 6 and 13</div><div>• Membership of a relevant professional body</div><div>• Has not served in the same SC as an employee in the preceding period of 5 years</div></div>	Three year tenure renewable once	Determined by the President in Consultation with SRC	Sign Contract with the President.
BOARD MEMBERS OF GIC	President	<div><div>• Bachelor’s degree and membership in a professional body</div><div>• Has served in a senior management position for a period of at least 6 years</div><div>• Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution</div><div>• Has not served in the same SC as an employee in the preceding period of 5 years</div><div>• Should be a member of the Institute of Directors</div><div>• In appointing the Board, the appointing authority should observe requirement of mix of skills across all functionalities of the State Corporation.</div></div>	Three year tenure renewable once	Determined by the President	Sign Contract with the President.
DIRECTOR GENERAL OF GIC	The Board of GIC	<div><div>• Relevant Bachelor’s and Master’s degree and membership in a professional body</div><div>• 10 years’ experience in relevant field and a minimum of 5 years in senior management</div><div>• Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution</div><div>• Be flexible to allow fast tracking of the youth in line with the Constitution</div></div>	Four year term renewable once	Determined by the GIC Board	Sign Performance Contract with the GIC Board

GENERAL PROVISIONS OF GIC AND STATE CORPORATION BOARDS			GOVERNMENT INVESTMENT CORPORATION (GIC)		
<p>i. The Board membership shall consist of between seven and nine members</p> <p>ii. Should be made in line with Article 27 of The CoK 2010 on equality and freedom from discrimination</p> <p>iii. There will be a Company Secretary who will be the Secretary to the Board</p> <p>iv. There will be adequate committees of the Board to cover the following functions:</p> <ul style="list-style-type: none"> - Audit and Risk - Governance and Human Resources - Technical / Development - Finance and Investments <p>v. Terms of Directors will be staggered to ensure a smooth succession</p>			<p>FUNCTIONS:</p> <p>i. Provide to Cabinet the feasibility for the establishment, merger or dissolution of State Corporations.</p> <p>ii. Play the role of investor on behalf of the government in all State Corporations and Government Linked Corporations (GLCs).</p> <p>iii. Maintain an inventory of all SCs, including data on their Directors and staff, assets and portfolio</p> <p>iv. Implement Government investment policy in all SCs</p> <p>v. Implement Government dividend policy in SCs</p> <p>vi. Determine terms and conditions of service for Boards of Directors of SCs</p> <p>vii. Develop guidelines for Terms and Conditions of Service for employees of SCs</p> <p>viii. Develop a dashboard to monitor performance of SCs on real-time basis</p> <p>ix. Ensure that Boards of SCs have adequate capacity to run their institutions</p> <p>x. Guide strategy, risk, performance and sustainability in SCs</p> <p>xi. Appoint the Chief Executive Officer for GIC and establish a frame- work for the delegation of authority</p> <p>xii. Appoint Chairpersons and Directors of the Boards of SCs from an established and continuously updated database of eligible and ineligible persons</p> <p>xiii. Provide oversight to State Corporations</p>		
TOP MANAGEMENT STAFF GIC	The Board of GIC	<ul style="list-style-type: none"> • Relevant Bachelor's and Master's degree and membership in a professional body • 10 years' experience in relevant field and a minimum of 5 years in senior management • Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution • Be flexible to allow fast tracking of the youth in line with the Constitution 	Contract term as determined by GIC Board	As Determined by GIC Board	Sign Performance Contract with the Director General
OTHER STAFF OF GIC	The Board of GIC in line with approved establishment	<ul style="list-style-type: none"> • Board of GIC 	Terms and conditions of service developed by GIC Board	Terms and conditions of service developed by GIC Board	Sign cascaded Contracts with their respective supervisors
BOARDS OF STATE CORPORATIONS					
CHAIRPERSONS OF SC BOARDS	GIC	<ul style="list-style-type: none"> • Master's Degree • Experience as a Board member for not less than 5 years • At least 10 years' experience in top management of a public or private institution • Meet requirements of Article 10, Chapter 6 and 13 • Membership of a relevant professional body • Has not served in the same SC as an employee in the preceding period of 5 years 	Three years renewable once	Determined by GIC	Sign Performance Contract with GIC Board

GENERAL PROVISIONS OF GIC AND STATE CORPORATION BOARDS		GOVERNMENT INVESTMENT CORPORATION (GIC)			
<p>i. The Board membership shall consist of between seven and nine members</p> <p>ii. Should be made in line with Article 27 of The CoK 2010 on equality and freedom from discrimination</p> <p>iii. There will be a Company Secretary who will be the Secretary to the Board</p> <p>iv. There will be adequate committees of the Board to cover the following functions:</p> <ul style="list-style-type: none"> - Audit and Risk - Governance and Human Resources - Technical / Development - Finance and Investments <p>v. Terms of Directors will be staggered to ensure a smooth succession</p>		<p>Functions:</p> <p>i. Provide to Cabinet the feasibility for the establishment, merger or dissolution of State Corporations.</p> <p>ii. Play the role of investor on behalf of the government in all State Corporations and Government Linked Corporations (GLCs).</p> <p>iii. Maintain an inventory of all SCs, including data on their Directors and staff, assets and portfolio</p> <p>iv. Implement Government investment policy in all SCs</p> <p>v. Implement Government dividend policy in SCs</p> <p>vi. Determine terms and conditions of service for Boards of Directors of SCs</p> <p>vii. Develop guidelines for Terms and Conditions of Service for employees of SCs</p> <p>viii. Develop a dashboard to monitor performance of SCs on real-time basis</p> <p>ix. Ensure that Boards of SCs have adequate capacity to run their institutions</p> <p>x. Guide strategy, risk, performance and sustainability in SCs</p> <p>xi. Appoint the Chief Executive Officer for GIC and establish a frame- work for the delegation of authority</p> <p>xii. Appoint Chairpersons and Directors of the Boards of SCs from an established and continuously updated database of eligible and ineligible persons</p> <p>xiii. Provide oversight to State Corporations</p>			
BOARD MEMBERS OF SCs	GIC	<ul style="list-style-type: none"> • Bachelor's degree and membership in a professional body • Directors to be certified within the first six months of appointment. • Has served in a senior management position for a period of at least 6 years • Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution • Has not served in the same SC as an employee in the preceding period of 5 years • Should be a member of the Institute of Directors • In appointing the Board, the appointing authority should observe requirement of mix of skills across all functionalities of the State Corporation 	Three years renewable once	Determined by GIC	Sign performance Contract with GIC Board
CHIEF EXECUTIVE OFFICERS OF SCs	Respective Boards of SCs	<ul style="list-style-type: none"> • Relevant Bachelor's and Master's degree and membership in a professional body • 10 years' experience in relevant field and a minimum of 5 years in senior management • Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution • Be flexible to allow fast tracking of the youth in line with the Constitution 	Four year term renewable once	Determined by the respective Boards based on GIC guidelines	Sign performance contract with the respective Board
TOP MANAGEMENT STAFF OF SCs	Their respective Boards in line with approved establishment	<ul style="list-style-type: none"> • Relevant Bachelor's and Master's degree and membership in a professional body • 10 years' experience in relevant field and a minimum of 5 years in senior management • Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution • Be flexible to allow fast tracking of the youth in line with the Constitution 	As determined by the Board	Determined by the respective Boards based on GIC guidelines	Sign Performance Contract with the Chief Executive Officer
OTHER STAFF OF SCs	The respective Boards of the SCs in line with approved establishment	<ul style="list-style-type: none"> • The respective Boards of the SCs 	The respective Boards of the SCs in line with GIC guidelines	The respective Boards of the SCs in line with GIC guidelines	Sign cascaded Contracts with their respective supervisors

State Corporations (SCs)

State Corporations will be under the ambit of the Government Investment Corporation and shall be overseen by boards of directors and chief executives appointed as described in Table 6.1. Submissions suggested that entities classified as state corporations with strategic functions needed closer linkages with the National Treasury and respective parent ministries. This was primarily because of the huge outlays needed to finance the strategic functions as well as the obligations key towards achievement of Kenya Vision 2010 and the Second Medium Term Plan targets. After due consideration of the various submissions, in respect to state corporations, it was agreed that there shall be a distinction in the governance framework between the commercial and the strategic commercial corporations. For the:

- **Commercial SCs**, the Chairman and members of the Boards shall be appointed by the Board of GIC and shall not include any official representation by Government Ministries/Departments.
- **Strategic Commercial SCs**, the Chairman and members of the Boards shall be appointed by the Board of GIC and shall include the Principal Secretaries to the National Treasury and the parent Ministry. Where the Principal Secretary is appointed a member, there shall be no provision for alternate representation. The Principal Secretary may nominate a Senior Officer to be appointed by GIC as a substantive member of the respective Strategic Commercial SCs.

State Agencies (SAs)

State Agencies (SAs) do not generally have a capital structure and the Government through the Treasury owns all assets invested. The current ownership structure by the National Treasury will be retained. However, with regard to governance oversight, an entity by the name National and County Agencies Oversight Office (NCAOO) will be established by the President as an independent office in terms of Article 132(4)(a) of the Constitution of Kenya, 2010 as illustrated in Chart 6.2 and Table 6.2.

Chart 6.2: Proposed Structure for the State Agencies

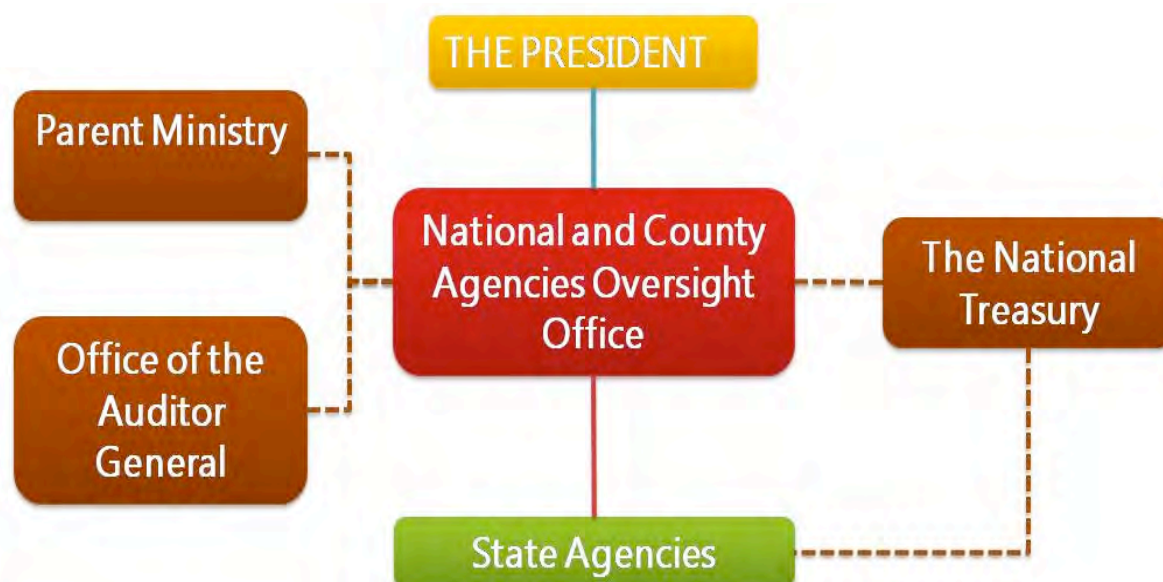


Table 6.2: Governance of the National and County Agencies Oversight Office (NACAOO)

THE NATIONAL AND COUNTY AGENCY OVERSIGHT OFFICE (NACAOO)					
Functions:- <ol style="list-style-type: none"> Oversee and regulate state agencies on matters relating to governance and management in accordance with legislation and the new Code of Governance. Provide to cabinet the feasibility for the establishment, merger or dissolution of state agencies. Develop standards and guidelines for appointment of Directors of State Agencies, County Corporations and County Agencies Develop guidelines for Human Capital resourcing including organizational structures, staff establishment and career plans Develop guidelines for management contracts and concessions in State Agencies, County Corporations and County Agencies Develop guidelines for Terms and Conditions of Service for Chairpersons, Directors and employees of state agencies in consultation with the Salaries and Remuneration Commission. Develop guidelines for performance contracting in State Agencies, County Corporations and County Agencies Maintain an inventory of all State Agencies, County Corporations and County Agencies including data on their Directors and staff Develop a dashboard to monitor performance of State Agencies on real-time basis Ensuring that Boards of State Agencies, County Corporations and County Agencies have adequate capacity to run their institutions Advising on performance contracting for State Agencies, County Corporations and County Agencies Carry out governance audits of State Agencies; and on request by County Governments in respect to, County Corporations and County Agencies Undertake restitution as directed by Parliament in instances of unaccounted for funds occasioned in State Agencies, County Corporations and County Agencies 					
CONSTITUTION OF NACAOO AND STATE AGENCIES					
	Appointment	Qualification, Skills and Experience	Tenure	Remuneration	Performance Management
DIRECTOR GENERAL OF NACAOO	The President	<ul style="list-style-type: none"> Relevant Bachelor's and Master's degree coupled with demonstrable ability and experience in specializations relevant to the mandate of NACAOO Membership in a professional body At least 10 years relevant experience in top management in either public or private institution Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution Be flexible to allow fast tracking of the youth in line with the Constitution 	Four year term renewable once	Terms and Conditions of service determined by the President	Sign Performance Contract with the President
TOP MANAGEMENT STAFF OF NACAOO	A panel appointed by the President with the Director general as the Secretary and in line with approved establishment	<ul style="list-style-type: none"> Relevant Bachelor's and Master's degree and membership in a professional body 10 years' experience in relevant field and a minimum of 5 years in senior management Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution Be flexible to allow fast tracking of the youth in line with the Constitution 	Contract terms subject to performance	Terms and conditions of service approved by the President	Sign Performance Contract with the Director General
OTHER STAFF OF NACAOO	The Director General in line with approved establishment for NACAOO	<ul style="list-style-type: none"> As determined in the career guidelines for NACAOO staff 	As per NACAOO terms and conditions of service	Terms and conditions of service approved by the President	Sign cascaded Contracts with their respective supervisors

The functions currently performed by SCAC, Inspectorate of State Corporations, shall be merged into NACAOO. The body will run under specialised directorates including Human Resources, Finance, performance contracting, portfolio management, investigations, Restitution, Legal and regulatory affairs amongst others.

NACAOO shall be headed by a Director General who shall be appointed by the H.E the President. It will operate from the perspective of being a lean and efficient outfit operating within six (6) specialised Directorates as shown in Chart 6.3.

Table 6.3: Governance of the State and County Agencies

BOARDS OF STATE AND COUNTY AGENCIES - GENERAL PROVISIONS					
<p>i. The Board membership will be between seven to nine, including two for the National Treasury and the Parent Ministry</p> <p>ii. The slots for the National Treasury and the Parent Ministry to be filled by the respective Principal Secretaries or their nominees who shall be substantively appointed by the Cabinet Secretary</p> <p>iii. There shall be no provision for Alternates</p> <p>iv. Should be made in line with Article 27 of The CoK 2010 on equality and freedom from discrimination</p> <p>v. There will be a Company Secretary in all State agencies who will be the Secretary to the Board</p> <p>vi. There will be adequate committees of the Board to cover the following functions:</p> <ul style="list-style-type: none"> o Audit and Risk o Governance and Human Resources o Technical / Development o Finance and Investments <p>vii. Terms of Directors will be staggered to ensure a smooth succession</p>					
CHAIRPERSONS OF SA BOARDS	President	<ul style="list-style-type: none"> Minimum First degree with experience; Postgraduate education added advantage Experience as a Board member for not less than 5 years At least 10 years' experience in top management of a public or private institution of a similar nature Meet requirements of Article 10, Chapter 6 and 13 Membership of a relevant professional body Has not served in the same SC as an employee in the preceding period of 5 years 	Three year term renewable once	Determined by NACAOO on the advice of the Salaries and Remuneration Commission	Sign Performance Contract with Cabinet Secretary of the parent Ministry
BOARD MEMBERS OF SAs	Parent Ministry Cabinet Secretary	<ul style="list-style-type: none"> Bachelor's degree and membership in a professional body Directors to be certified within the first six months of appointment. Has served in a senior management position for a period of at least 6 years Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution Has not served in the same SC as an employee in the preceding period of 5 years Should be a member of the Institute of Directors In appointing the Board, the appointing authority should observe requirement of mix of skills across all functionalities of the State Agency 	Three year contract renewable once	Determined by NACAOO on the advice of the Salaries and Remuneration Commission	Sign Performance Contract with Cabinet Secretary of the parent Ministry
CHIEF EXECUTIVE OFFICERS OF SAs	Respective SA Boards	<ul style="list-style-type: none"> Relevant Bachelor's and Master's degree and membership in a professional body 10 years' experience in relevant field and a minimum of 5 years in senior management Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution Be flexible to allow fast tracking of the youth in line with the Constitution 	Four year term renewable once	Determined by the respective Boards based on the guidelines by NACAOO	Sign performance contract with the respective Board
TOP MANAGEMENT STAFF OF SAs	Their respective Boards in line with approved establishment	<ul style="list-style-type: none"> Relevant Bachelor's and Master's degree and membership in a professional body 10 years' experience in relevant field and a minimum of 5 years in senior management Meet the requirements of Article 10, Chapter 6 and 13 of the Constitution Be flexible to allow fast tracking of the youth in line with the Constitution 	Contract terms subject to performance	Determined by the respective Boards based on the guidelines by NACAOO	Sign Performance Contract with the Chief Executive Officer
OTHER STAFF OF SCs	The Board based on the approved establishment in line with NACAOO guidelines	<ul style="list-style-type: none"> The Board as per the career progression guidelines 	As per the approved Board's terms and conditions of service in line with NACAOO guidelines	Determined by the respective Boards based on the guidelines by NACAOO	Sign cascaded Contracts with their respective supervisors

Chart 6.3: Proposed Organisational Structure for NACAOO

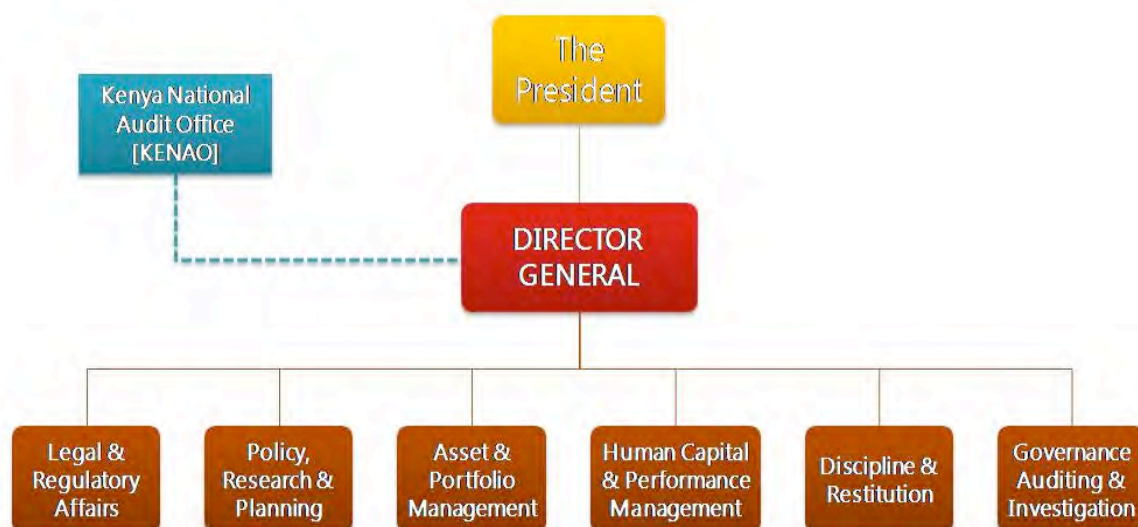
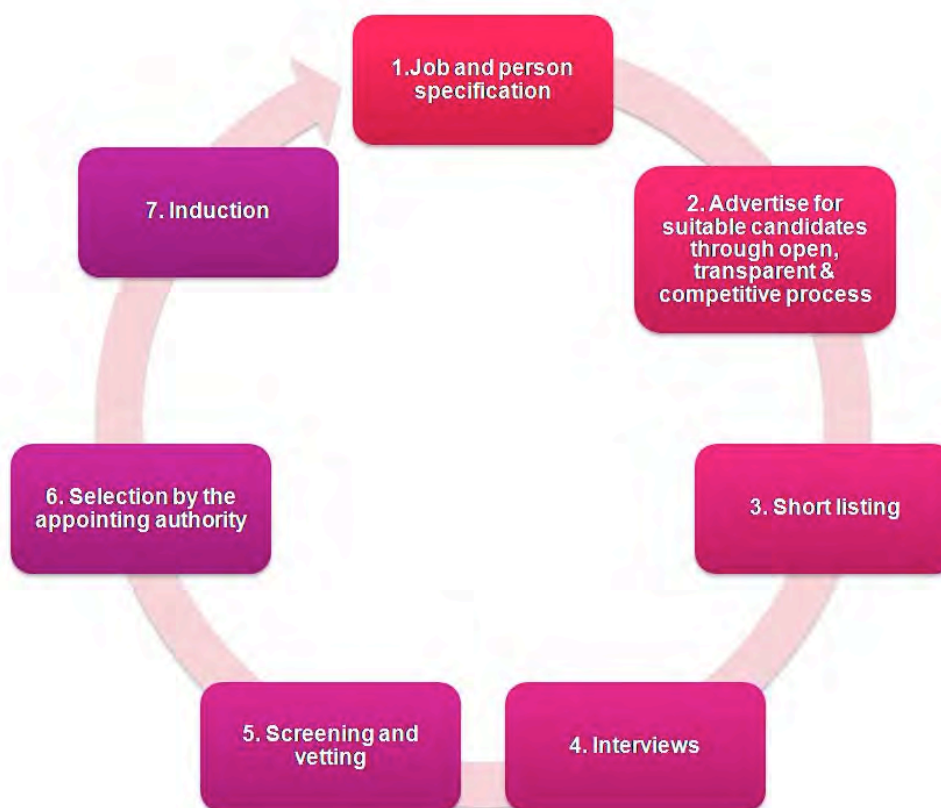


Chart 6.4: Appointment Cycle for Board Members of State Corporations and State Agencies



Governance of County Corporations and Agencies

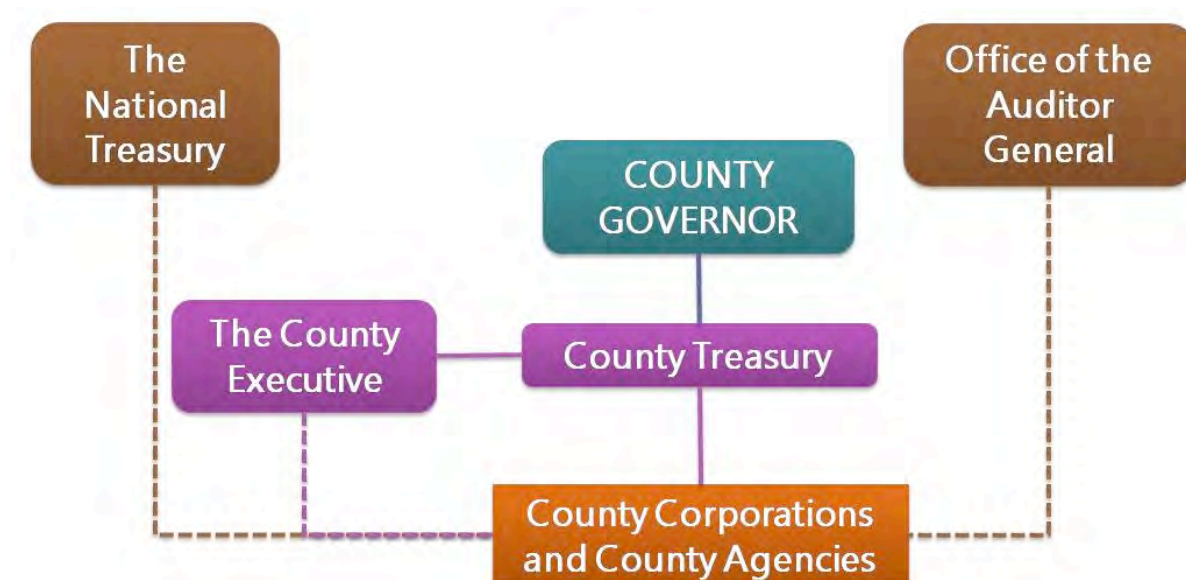
Preamble

The Constitution of Kenya 2010 establishes a devolved system of governance in which there is a national government and 47 county governments. Functions for each level of government are provided for at Schedule Four of the Constitution. Segregation of functions has implications for operations of existing state corporations. Similarly, County governments may also wish to establish corporations in furtherance of service delivery or wealth creation. Such entities, which are of body corporate status shall fall in the realm of Government Owned Entities, classifies as either county corporations or county agencies in this report.

Legal Framework

In this report, the need for the enactment of an omnibus Government Owned Entities Act has been reiterated. The Act will recognize the unique characteristics of national state corporations & agencies as well as county corporations & agencies. The Act will provide for an institutional framework that promotes accountability, good corporate governance, and results orientation without stifling operational autonomy while operating within the requirements of the Constitution.

Chart 6.5: Proposed Organisational Structure for NACAOO



Governance principles

With regard to appointments, staffing and discipline, performance management, remuneration, incentives and rewards, governance requirements, code of governance and management, size of Boards of Directors, appointment of Board members and Boards duties and responsibilities, mergers and acquisitions, procedures for dissolution; it is recommended that governance frameworks as applicable to state agencies apply mutatis mutandis and illustrated in Chart 6.5.

Code of Governance

Background

The Government is the majority or sole owner of almost all GOEs, and as such is responsible for ensuring that frameworks exist that set out the corporate governance of these entities. Government represents the State's ownership interest in GOEs through different institutions: Shareholder Ministers/members of Executive Committees and municipalities. Within the

national and provincial Government spheres the Government is, in most cases, represented by policy Ministers that also double up as shareholder Ministers.

A carefully developed and well-designed GOE corporate governance framework is essential to ensure the viability and efficiency of the GOE sector. GOE corporate governance framework is enshrined in various legislation. The GOE legislative environment in Kenya is characterised by a myriad of legislation that is overlapping, conflicting, and fraught with duplicated provisions that lead to confusion in interpretation and application. The enactment of the State Corporations Act Chapter 446 in 1986 for the first time created a regulatory framework for the management of state corporations. Before this the sector was largely guided by individual enabling legislative and legal notices. As a result, each state corporation operates within the legal instrument under which it is established, and provisions of the State Corporations Act. The situation is different for corporations operating under the Companies Act Chapter 486, the Banking Act Chapter 488 and Insurance Act Chapter 487. Corporations operating under the Companies Act, Insurance Act and Banking Act are required to comply with requirements therein as well as those of the State Corporations Act. Those that are listed on the Nairobi Securities Exchange are also required to comply with Capital Markets Act Chapter 485A and Capital Markets Authority Regulations. In this regard, governance requirements from various laws agencies are often at conflict with adverse effects on decision-making processes, while compliance requirements affect efficiency.

Accordingly, a review of the governance framework directly impinging on GOEs is critical for developing an understanding of how it affects the performance of GOEs, and to suggest reforms to this governance framework to make it more effective. The aspects of the GOE governance framework that are the most significant relate to size and composition of Boards, appointment of Boards, appointments of management staff, remuneration of Boards, remuneration of management Staff, code of governance and oversight.

This review of the GOE governance framework considers the impact of the current arrangements on the enabling environment for GOEs. The purpose of this report is to:

- investigate whether the governance framework(s) under which GOEs currently function is adequate to enable GOEs to perform efficiently and effectively;
- benchmark Kenya's current governance framework with international best-practice with a view to recommending effective reforms; and
- recommend changes to the governance framework that would contribute to enhancing the performance of GOEs in Kenya.

Thus the purpose of this analysis is to review the current corporate governance and oversight frameworks of GOEs to assess their impact on GOEs with a view to recommending changes to these frameworks.

Policy Issues and Challenges

The method and the effectiveness with which GOEs are directed, controlled and held to account are of particular importance to all stakeholders. GOEs operate under a governance structure that is quite complex, involving relationships between Parliament, Ministers, boards and CEOs. This complexity of relationships and interdependence invariably results in confusion over the allocation of responsibilities and the accountability for results. Under these circumstances, effective corporate governance is vital for ensuring stakeholder confidence in the management of GOEs. In addition, the importance of corporate governance generally for companies, whether private or State-owned has been underscored by the global financial crises, corruption scandals, waste and bankruptcy of companies. Despite the noble reasons for the creation of GOEs, they are in many cases in many countries often less productive than private companies.

In Kenya most GOEs operate without clearly defined legislation or frameworks that set out how they should be governed, organized, managed and what their purposes should be, especially GOEs in Kenya which straddle different departments and tiers of Government. Because there is no common shareholder governance model across departments and spheres of Government, the State is forced to rely on 'ad hoc instruments', which are unsuitable to hold GOEs accountable.

GOEs in Kenya are often in the news for poor performance in delivering on Government guarantees; corporate governance breaches; routine unqualified audited financial statements; and ineffective boards and CEOs. Among the key factors that undermine the effectiveness of GOEs is the way they are governed – the legislation and frameworks governing them, oversight institutions, shareholder and stakeholder responsibilities, boards of directors, and management. "Transparency of GOE operations, planning and reporting, and a clear accountability framework, which also sets out the roles of Government (as owner), Ministers, boards, and senior management of GOEs, are fundamental principles that underlie good governance".

It must be noted, from the outset, that Kenya has no consolidated framework for GOE corporate governance. Corporate governance is defined here as all those structures, systems, processes, procedures and controls within an organisation, at both oversight and monitoring level, and within the management structures of the organisation, that are designed to ensure that it achieves its objectives, that it does so within sensible risk management parameters, and that it does so efficiently, ethically and equitably. In Kenya, structures, systems, processes, procedures and controls for corporate governance of GOEs are set out in a variety of different laws. Such a framework combines all the elements that are essential for the successful implementation of corporate governance processes and practices.

Like their counterparts in many countries, the Kenyan public sector and GOEs operate in a challenging and changing environment. GOEs have to navigate a cumbersome legal and regulation framework to conduct their businesses. They also have to contend with enormous amounts of contradictory policy papers. Nevertheless, the Kenyan framework provides GOEs with a solid foundation from which they can develop and implement governance structures such as boards, committees and risk management processes. However, implementation of the framework is not without its challenges.

The controlling boards are in the main created by law through founding legislation, or, for corporatized GOEs, through their articles of association and the Companies Act as well. Their role is to provide governance (direction and control), policy and management advice, or the achievement of various stakeholder objectives.

GOE officials find the numerous laws applicable to GOEs very onerous, particularly so for smaller GOEs which do not have the legal support or the means to pay for legal advice. Interpretation becomes subjective, and it leads to lack of compliance, leading to poor governance. For the most part, founding legislation for GOEs that are incorporated makes provision for governance matters that duplicate the provisions contained in the Companies Act among others. It is often onerous and therefore undesirable for GOEs to rely on the conflicting provisions in the various laws when complying with governance expectations. In addition, there is persistent duplication where separate legislation applicable to one GOE contains provisions regulating the same subject matter. The duplication of provisions in different legislation on one subject may lead to unintended consequences and is a potential source of confusion. By way of example in this regard, in most instances the founding legislation of the GOE attempts to provide for issues such as the reporting obligations of the GOE. However, this would also be dealt with in other legislation such as the CMA Act, meaning that in order to comply, the accounting officers of these GOEs must observe provisions appearing in two or more pieces of legislation to ensure compliance. In addition

this multiplicity of reporting and compliance frameworks leads to conflict and inhibits GOEs from achieving their mandate.

The governance framework for GOEs was found to be inadequate, displaying evidence of conflict and duplication. The governance and oversight systems were found to be inadequate. The quality of the board and executives' recruitment was found to be inadequate. There is no clarity on the role of the executive authority; boards; and the Chief Executive in the governance and operational management of GOEs. The remuneration frameworks and practices are inconsistent. They require urgent reconsideration because they impact directly on the performance of GOEs and influence the supply and demand for skilled personnel in the market.

The service delivery performance of GOEs was found to be mixed, some exhibiting excellence and providing high quality services, while in other areas there are deficiencies characterised by low levels of customer satisfaction, complaints and service delivery civil protests.

The performance of GOEs is subject to a number of variables, including the performance contracts between the executive authority and the board of GOEs. Despite the importance of these, they are often not signed on time and make insufficient provision for measurable objectives. Generally, GOEs tend to lack robust leadership and initiative on crucial transformation imperatives such as achieving national development goals, the creation of meaningful employment opportunities and comprehensive skills development. This reduces the impact made by GOEs in service delivery and it increases their costs.

Global Best Practice

As the world becomes more interconnected and faces similar challenges, governments are learning from each other, while at the same time striving to deal with their unique conditions through innovative approaches. International experience shows that governments worldwide are increasingly making use of GOEs as catalysts of growth, development, employment generation and transformation of economies and societies. Similarly, in Kenya, GOEs are seen as important agents of change that are able to contribute positively to economic and social transformation, the creation of decent work, growth and development of society. Many of the countries evaluated have embarked on review processes to investigate and reformulate the specific goals, rationale and mission of GOEs, individually and collectively, in terms of accelerating wider economic growth, expanding industrialisation, providing infrastructure, and ensuring quality and timely public service delivery. These countries have formulated a clear national policy on the role of GOEs in driving the objectives of a national development plan. Some countries have standing processes in place to regularly review the rationale, goals, mission and performance of GOEs.

An international comparative review of the GOE corporate governance structure in Five countries (among others was conducted, and principles of best-practice abroad were looked at in examining the impact of the current GOE governance frameworks in Kenya. These countries include Kenya, PRC, Singapore, Malaysia, New Zealand and UK. The choice of these particular countries was primarily predicated on the strong similarities in GOE governance (from a legislative point of view) between the selected countries and Kenya, as well as other relevant areas.

In these countries GOE reforms have proved reasonably successful. They have focused on formulating a clear overarching legislative framework for GOEs and setting out objectives for the management of GOEs. Related to this is the reality that many governments have formulated an explicit 'ownership policy' that defines the overall objectives of State ownership; the State's specific role in the corporate governance of GOEs; and how the State will implement such ownership policy efficiently. China, for example, established the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to

oversee the ownership, supervision and monitoring of GOEs. Singapore, on the other hand, formed a separate company, Temasek Holdings, to serve as the central ownership and monitoring agency for GOEs. Similarly, France established the Agence des Participations de l'Etat to oversee GOEs.

The PRC found that where the formation of a single entity was not politically feasible, a separate State agency was set up to monitor the performance of GOEs. This is the case in New Zealand, where ensuring the accountability of GOEs was split between line-function ministers and a semi-independent Crown Company Monitoring Advisory Unit, which not only monitors the performance of GOEs but also provides strategic advice to line ministers on how to maximise the resources of GOEs.

Reforms have also focused on clarifying interactive roles between governments as shareholders; entity boards; executive management; and regulators. Some governments have attempted to set clearer objectives and performance targets for GOEs, including financial targets, developmental impact and employment creation. In the case of multiple objectives – which are often the case, the State should rank them in order of importance.

A strong focus has been on developing less opaque mandates and creating vigorous monitoring and evaluation policies and systems. The idea has generally been to set clearer 'objectives and targets, which can be monitored and reported on over time'.

Furthermore, reforms have focused on improving overall State capacity in the GOE as well as in the GOE oversight institutions such as Parliament and the executive authority, including State independent governance and oversight agencies. These governments and their parliamentary oversight organs have tried to bring more transparency into the operations of GOEs i.e., transparency similar to that of listed companies. As an example, Sweden has a requirement for GOEs to provide quarterly reports, which must include financial statements. In addition the State has to make a public disclosure of the goals, assessments, and guidelines for oversight of GOEs.

Various countries have also made robust efforts to improve performance and initiated ground-breaking policies to attract and retain those with the requisite talent, expertise and innovative ideas to serve on GOE executive management and boards.

Corporate governance in South Africa was institutionalized by the publication of the King I Report on Corporate Governance in November 1994. The King Committee on Corporate Governance issued a detailed report on corporate governance, a series of recommendations and a Code of Corporate Practices and Conduct. The report went beyond the financial regulatory aspects of corporate governance by advocating an integrated approach to good governance in the interests of a wide range of stakeholders and showing regard for the fundamental principles of good financial, social, ethical and environmental practice. The King Report considered financial reporting and accountability; good practice on the responsibility of directors; the case for audit committees; the principal responsibility of auditors; and the links between shareholders, boards and auditors. In addition, the King Committee's terms of reference included a Code of Ethical Practice for Kenyan enterprises and took account of special circumstances and of disadvantaged communities in South Africa.

The King Committee subsequently reviewed corporate governance standards and practices in Kenya against developments that took place after the publication of King I. The Code of Corporate Practices and Conduct in King II replaced the Code of Good Corporate Practices and Conduct in King I, with effect from 1 March 2002. Subsequently, King III was, among other things, necessitated by the simultaneous development of the New Companies Act, which became effective in 2010. The King III Report places more emphasis on leadership, sustainability and corporate citizenship. Emphasis is also placed on integrated reporting, which provides a holistic evaluation of a company's impact on the economic life of the stakeholders in the environment in which it operates.

The King III guidelines apply to all GOEs, whether the entities are commercial or not. As a result there is an expectation that all these entities will implement corporate governance measures recommended by the report on a ‘comply or explain’ basis. King III sets out the roles and responsibilities of boards, which it envisages as having a central role in providing ethical leadership and ensuring that their companies are responsible corporate citizens whose ethics are managed effectively.

In addition to the Code of Corporate Governance Practices and Conduct contained in the King I Report South Africa developed a public sector-focused code to address governance issues that are pertinent to the public sector and were not adequately addressed in the King Code. The Protocol on Corporate Governance in the Public Sector was first published in 1997 and subsequently reviewed with a view to inculcating the principles of good governance in the GOEs. In the protocol the boards of GOEs are fundamental in corporate governance. It sets similar responsibilities for boards of GOEs as those in the private sector. The protocol states that the relationship between the executive authority and GOE boards should be governed by a shareholder’s compact. Furthermore, it says that the majority of the board should be non-executive, to increase their objectivity and independence. Crucially, it states that the executive authority should effect remedial action, when GOE boards fail to meet their objectives and performance targets. The boards of GOEs, like in the King Code, have a charter outlining their responsibilities. The protocol recommends the establishment in every GOE board of audit, remuneration, nomination and risk management committees.

BOX 6.1: PERTINENT CORPORATE GOVERNANCE PRINCIPLES

1. Shareholder rights and responsibilities
2. Board appointment and composition
 - a. Appointment of directors
 - b. Composition and size
 - c. skill set required for appointment
 - d. appointment of the Board Chair
 - e. Board Committees and their responsibilities
 - f. Cessation
3. Board roles and responsibilities
 - a. General roles and responsibilities
 - b. Appointment of the CEO
 - c. Engagement with senior Management staff
 - d. Implementation of Board resolutions
 - e. Performance evaluation
 - f. Accountability, corporate social responsibility and sustainability
 - g. Risk management and internal controls
 - h. Succession planning
4. Boards conduct of affairs
 - a. Board Chair and the Chief Executive Officer
 - b. Board meetings
 - c. Director disclosures
 - d. Values, ethics and board culture
 - e. Board trainings and induction
5. Board Remuneration
6. Laws and regulations referenced by this Code of governance

In Kenya there is a need to review the GOE structure of Corporate Governance to give effect to unique and nuanced principles governing GOEs. It is also necessary to ensure that such a governance structure applies to all GOEs.

Recommendation on Code of Governance

The Taskforce’s review of international approaches to policies regarding corporate governance of GOEs indicated that careful consideration is given to the development of clearly defined corporate governance principles. Some of the common elements of corporate governance in the countries benchmarked include the transparency of corporate structures and

operations; the implementation of effective risk management and internal control systems; the accountability of the board to stakeholders through, for example, clear and timely disclosure; and responsibility to society. The board is responsible for ensuring good corporate governance, determining and approving corporate strategy, and providing guidance and oversight to senior management. It is also responsible for approving and reviewing the overall business strategies, significant policies and structure of the organisation; has the absolute responsibility for the performance of body in meeting its stated objectives and obligations as a public body; and is fully accountable for this outcome to the responsible Minister(s). The board must also ensure that an effective system of controls is in place to manage, among other things, the major risks faced by the organisation; reporting performance to stakeholders; and complying with applicable laws and regulations.

It is clear that an effective governance framework must start with the powers, roles and responsibilities of the board being clearly defined. Without such definition, clear accountability for the achievement of objectives cannot be achieved.

In the past issues of good corporate governance, sustainability, accountability and integrity have remained a key challenge in the state corporations Sector. The Constitution of Kenya 2010 has taken significant steps to address the problem. Article 10 of the Constitution entrenches national values and principles of governance while Article 73 reinforces national values for governance through emphasis on public trust, bringing honour to the nation and dignity to the office. Personal integrity, competence and suitability are equally emphasized and reinforced in Article 232 on Values and Principles of public service. The Article also alludes to efficiency, effectiveness and economic use of resources. These provisions are the basis upon which a corporate code of governance for the state corporations sector will be anchored.

To address the governance challenges highlighted above and incorporate the Constitution principles the Committee recommends adoption of the King III Report on Corporate Governance (as modified by OECD guidelines). A few of the most pertinent principles are highlighted in Box 6.1. The toolkit for implementation comprises of:

- Code of Best Practice
- Board Charter
- Code of Conduct and Professional Ethics
- Board Work Plan
- Performance Evaluation Mechanism

The committee recommends that professionals of good standing drawn from different fields prepare the code of governance. The code of governance should then be subjected to stakeholder consultation before adoption. The adopted Code of Governance and Ethics will apply to both State corporations and State agencies. Listed state corporations will comply with the CMA Guidelines⁹ in this regard.

CHAPTER SEVEN

BUSINESS CASE AND FINANCIAL SUSTAINABILITY OF GOVERNMENT OWNED ENTITIES

Background

Nations around the world have grown their economies through effective and efficient management of state corporations and agencies. Kenya is not an exception and can therefore exploit its Corporations and Agencies for the same. This makes these Corporations and agencies integral part of the nation's development agenda. However, for the Corporations and agencies to perform adequately and bring value to the Government and its citizens, the concept of adequate resource mobilization and prudent utilization is brought into focus.

The state Corporations and agencies in Kenya are set up to undertake specific mandate on behalf of the Government. The question of whether these entities are appropriately funded given their respective mandates is a critical one since this will determine if they are able to fulfil their mandates. This should be looked at on the basis of the corporations and agencies capital structure, self funding and delivery of services in a structured and affordable manner.

State Corporations that receive exchequer funding are those that, by their nature, are not-for-profit but perform specific functions that need to be funded by Government. State Corporations that operate on profit principles ordinarily do not depend on exchequer funds but may receive government grants to implement strategic development projects. In the year 2004, the Government clustered State Corporations and agencies into eight (8) categories for purposes of salary determination. These are Financial Corporations; Commercial/Manufacturing Corporations; Regulatory Corporations; Public Universities; Research and Training Institutions; Service Corporations; Regional Development Authorities; and Tertiary Education and Training Institutions. State Corporations created after 2004 were fitted into the structure in accordance with their mandate.

The initial categorization has since changed significantly arising from re-categorization on the basis of function, performance and scope of operation. For example, a policy decision was made by the State Corporations Advisory Committee to place regulators at the same salary band within the sector they regulate. In addition, there were a number of entities, commercial or not, that were allowed to pay salaries at market rate.

Accordingly, the proposed classification is one where the Government owned entities are divided into two broad and distinct categories of for profit corporations and not for profit state agencies. The corporations which are for profit are categorised as commercials under which there will be a sub category of strict commercially run corporations which are proposed to be purely on business for profit purposes while the other sub category will be commercial corporations but with strategic Government function. These will be run in a semi business like environment. These corporations will be managed by the proposed Government Investment Corporation (GIC). On the other hand, the not for profit bodies are sub categorised into Executive Agencies, Independent Regulators and Universities, Research and Tertiary Institutions. The proposal for funding of Government owned entities as advanced in this chapter has therefore taken into consideration the above categorization.

Current Funding Arrangements for Government Owned Entities

Funding of State Corporations

This is a category of state corporations comprising of:

- i. Companies with GoK shareholding, through Principal Secretary to the Treasury as a body corporate (now Cabinet Secretary to the National Treasury), being more than 50%; and,
- ii. Corporations with mandates to operate commercially.

Commercial corporations in Kenya generally fund themselves on the strength of their balance sheets and revenue generation. Occasionally these corporations are aided further by Government guarantees and or grants if needed.

Treasury issues a significant amount of guarantees to back up the balance sheet debt funding of the corporations whose requirements cannot be supported by their balance sheets on a stand-alone basis. The National Treasury has, informally but consistently, upheld a policy which proclaims that commercial corporations need to operate sustainably, they need to borrow mainly on the strength of their balance sheets.

Some Commercial corporations have also tried and successfully obtained tariff increase approvals from their respective regulators. The tariffs effectively increase income and ultimately their retained earnings, which are used by the corporations to finance their capital programmes. Such revenues are insufficient, hence the feeling that alternative methods of funding should be explored in order to address the current debt burden and to reduce reliance on tariff increases that may in the long-term prove to be flawed and non sustainable.

Amongst the Commercial State Corporations are corporations that have a “public goods” mandate for which GoK is required to meet full cost using budgetary resources approved by the National Assembly. These are corporations like the Kenya Broadcasting Corporation, Kenya Ferry Services Limited and National Cereals Produce Board. Some of them like the Pyrethrum Board of Kenya are Commercial State Corporation but with multiple conflicting mandates of commercial, regulatory and promotional mandates.

Collectively, the fifty-two (52) Commercial State Corporations registered a growth in turnover profits and dividends (to the Exchequer) over the period 2009/10 through 2011/12 as shown below.

Table 7.1: Performance of State Corporations, 2009/10 to 2011/12

	2009/10	2010/11	2011/12
Turnover	216.6	238.6	284.2
Profit	30.1	40.4	40.1
Dividend	1.12	1.27	2.23

Source: National Treasury submissions

Turnover, profit and dividends, therefore, grew by 31.2%, 33.2% and 99.1% respectively between 2009/10 and 2011/12. The top five (5) commercial state corporations by turnover and profit over the same period were Kenya Pipeline Company, Kenya Ports Authority, Kenya Power and Lightning Company, the Kenya Airports Authority and Kenya Re Insurance Corporation. The total Government funding for both Development and recurrent for the listed corporations over the same period stood at Kshs. 3.6 billion. Other independent regulators such as the Capital Markets Authority and the Kenya Sugar Board in the Financial and Agriculture sectors respectively also managed to generate funds at fairly sustainable levels.

It can therefore be argued that the financial performance of these corporations have been on the increasing trend due to the public sector reforms which the Country embarked on since the

year 2003. Government owned entities therefore can perform and equally their private sector counterparts if issues of Governance are adequately managed.

Funding of Independent Regulators

Presently, there is no clear cut policy on the funding of the regulatory institutions in the Country. This is because a number of these corporations do self funding purely on the basis of service charges they levy on the public while on the other hand, some of these corporations either wholly or partly depend on the exchequer for funding.

This type of arrangement has caused a situation where some regulators are able to generate more funding depending on the vibrancy and the size of the sector they operate in. For instance, in the Agriculture sector, regulators in the core agricultural commodities such as Sugar, Tea, Horticulture and Coffee are able to levy enough fees and fund themselves adequately without relying in the exchequer. Such corporations a times declare surplus. Other organizations such as the Coconut Development Authority and Cotton Development Authority have not been able to fund their operations and purely rely on the exchequer for the same.

Funding of Research Institutions

Funding in the Research institutions equally faces the same challenges like the regulatory bodies. Presently, there is no policy for research funding in the Country and the commodity specific research institutions often get funding through the regulators in the respective sectors they operate in. Such fundings are not enough and are often supplemented by direct Government funding. Other research bodies that are not sub sector specific such as the Kenya Agricultural Research Institute are directly funded by the Government for both their recurrent and development activities. However, in some instances, such bodies are allowed to attract donor funding and grants through proposals and collaboration activities.

Funding of Public Universities and Tertiary Institutions

Previously, the Government of Kenya was in charge of University Education and Public Universities were fully and directly funded from the exchequer to undertake their operations. In the year 1991/1992, the Government introduced cost sharing in universities. As such, only a portion of the students tuition fee is directly given to the University whereas the students themselves fund the balance. The Government still extends funding to students through low interest loans given by the Higher Education Loans Board (HELB). Over the years, the Government has increased this money with the ultimate idea of making it a fully revolving fund. The table below shows the latest levels of loan disbursement by the Government through HELB in the last five financial years.

Table 7.2: Loan Disbursement to Undergraduate and Post Graduate Students from 2008 - 2013

Undergraduate		
Financial Year	No of students	Total loan awarded
2008/9	68,667	2.5Bn
2009/10	69,400	2.9Bn
2010/11	79,639	3.25Bn
2011/12	105,879	4.47Bn
2012/13	118,483	5.4Bn

Source: HELB Submissions to Taskforce

Table 7.3: Loan Disbursement (Scholarships) to Post Graduates

Postgraduate (scholarship)		
Year	No of students	Total Award
2008/9	39	11.3M
2009/10	37	11.5M
2010/11	50	15M
2011/12	66	18M
2012/13	77	21M

Source: HELB Submissions to Taskforce

From Table 7.2 and 7.3 it can be noted that funding of students through HELB has increased considerable from the year 2008 to date. However, the increase has not been commensurate to the increasing rate of student numbers in the University leading to inadequate amounts of disbursements to students. The problem has been compounded by the decision by the Government to make the students loans available to learners in private and lately tertiary / middle level institutions.

Most of the tertiary institutions are self financing from the fees they charge students while some intermittently receive Government funding in terms of grants for either capital projects or to foot remuneration bills.

Besides the Government funding, universities and a number of tertiary institutions have ventured into programmes which they run commercially to bridge the funding gap between what the Government and mainstream students pay and the overall budgetary demand of the institution.

Policy Issues and Challenges

It is therefore likely that the policy requirement for redressing the past and present funding patterns on Government owned entities, as well as to correctly position the Kenyan economy for growth and development, has been grossly underestimated. The commercial corporations that are charged with infrastructure investments and developments often have limited ability to fund such fundamental transformational ‘game-changing’ requirements unless there is a relaxation of conservative fiscal policy and to allow them to operate in purely for profit objective.

Before the reforms initiated in the year 2003, many commercial corporations were also debatably mismanaged. Many of these corporations’ balance sheets were poorly capitalised and many of them were saddled with a legacy of debt, which made it impossible to make the necessary investment in the ageing infrastructure. They had no capacity to access debt on a standalone basis.

Thus, under close scrutiny, significant commercial corporations’ such as the Kenya Railaawys Corporation, infrastructure funding capacity reveals that they substantially fall short of the required capital injection. The financial capacity of these corporations is way below the projected infrastructure investment, implying that the manner in which they are currently configured can only play a limited role compared to their counterparts in countries like Singapore, South Africa, Brazil, Russia or China. Therefore, unless a drastic turn around policy measure to expand their market capitalisation is immediately embarked upon by the Government, commercial corporations will be unable to discharge their national developmental finance goals optimally.

Kenya lacks a clear Government policy on funding of Government owned entities. Such practice has caused several challenges including arbitrary funding of the entities even in cases where they are performing the same mandate. The resultant scenario is inability of some of the Corporations to adequately undertake their mandate, remunerate their staff and utilize the available national workforce for improved service delivery while on the other hand, some of the organizations are able to source more resources and remunerate their members highly.

Unstructured funding has equally resulted in discontent amongst Government owned entities under the same category as members seek for equality and equity. In some incidences of performance contracting, organizations that purely rely on the ex-chequer have not been able to favourably compete in the event that such funding is not adequately and timely disbursed.

The borrowing programmes of some of the commercial corporations to finance their capital investment activities (some of which debt is guaranteed by Government) contributes to an increase on the national debt burden. Presently, a number of state corporations continue to be dependent on Government support, whether in the form of explicit Government guarantees,

grants, loans or subsidies. Some of these corporations e.g. the sugar sector companies have expressed growing concern with regard to their ability to meet future funding requirements in a COMESA safeguard free environment. It has been observed that both the public and corporations themselves especially the commercial oriented corporations are also calling for a policy paradigm shift, demonstrated by their expressed interest in opening a national debate on alternative means of funding their capital investment requirements. Such calls are enhanced by the pressure to perform that is currently put on them by the performance contracting process.

This growing concern for funding sustainability is substantiated by the high correlation between the prices they charge for their services and their borrowings. They further argue that the burden of recovery is unfairly skewed towards the current consumers or users instead of spreading it across the fiscus through general/special purpose taxes or levies, and throughout the full useful life of each particular capital asset.

Non-commercial government entities consider their funding models to be limiting and they also indicate that they are not adequately funded. They argue that these constraints negatively impact on their capacity to undertake effective long-term planning. 80% of the non commercial state corporations which do not meet their performance contracting target do sight inadequate funding as the main reason for non performance. This is worsened when such funding from the exchequer get abruptly reduced or withdrawn altogether because of austerity measures.

Another critical challenge with the present funding arrangement is where the Government disburses the money to institutions of higher learning based on theoretically allocated numbers as opposed to actual reporting students. Bottom line is that in case some of these students do not report then such fundings become subject to abuse.

Overall, the challenges of funding of corporations are;

- Commercial state corporations are highly restricted from accessing Government grants and often complain of insufficient funding. Most of their budgeted allocations are taken up by operating costs.
- Commercial corporations with strategic functions operate in highly competitive sectors, with a few, such as Kenya Power and Lighting Company, enjoying State supported monopoly functions. There are concerns about their ability to meet future funding requirements. Besides, a number of these corporations continue to be dependent on Government support in the form of explicit Government guarantees or subsidies (e.g. KBC).
- Most of the Government owned entities perform below their return on assets hurdle rates and asset utilisation rates.
- Most of the capital expenditure is replacement, rather than expansionary; thus much of this capital expenditure cannot be 'transformational'.
- Non-commercial entities, consider their funding models restrictive and inadequate, making it impossible for them to effect long-term planning.
- There are other categories of corporations which are service bodies mostly water boards and utilities which run their operations on a commercial basis but require subsidies to carry out their mandates.
- The poor financial viability of some corporations, especially commercial entities, makes it difficult for them to raise funding;
- There is poor asset utilisation and productivity, partly due to obsolete technologies and inadequate physical and human resources. As a result, some of the corporations lag behind their international peers;

Recommendations for Financial Sustainability of State Corporations

Rationalization of Government involvement in Commercial Activities

Given the constraints of both the deployment of taxes, the balance sheets of the commercial corporations and the ‘user pays’ approach, it is vital to consider the rationalizing of State investments. Leveraging State resources means focusing on those corporations that provide public goods, address national priorities and interests in the first instance, and then considering a full business oriented operation from those sectors where market failure no longer exists.

Where the national interests mandate can no longer be established, and where the corporation is competing unsuccessfully against private sector competitors, this will support the overall commercial corporations sustainability with reduced losses to be absorbed by the State or privatized without conflict, while optimizing competitive neutrality in the economy.

It is also true that with over 200 entities, the State has reached a point where such prudent rationalization will allow the State to be focused in order to improve delivery effectiveness and a strategic approach to mobilise limited financial resources, in much the same way that many other emerging economies have done, including Brazil, China and Malaysia.

It is recommended that the Government should rationalize its investments by business orienting those purely commercial corporations and focusing only on those deemed to be strategic, namely serving national interests, national security and priority sectors. This can be done either by:

- Fully commercializing those corporations from those sectors where market failure no longer exists or the mandate is no longer justifiable. Such corporations to be fully run commercially under the GIC; or
- Divesting either fully or partially from those state corporations observed to be under-performing and those that are competing unsuccessfully against private operators; or
- Absorbing those entities whose functions can be cost-effectively carried out by Government departments by incorporating them into line function department programmes.

Effective Oversight Structures for Rationalized Commercial Corporations

Presently, the Country’s oversight management of the commercial corporations is characterized by a highly controlled but disjointed managerial approach. There is no consistent rational and principled valid basis for the current location of these corporations with various oversight authorities including the relevant sector Ministries, the National Treasury and at the same time requiring them to perform in competitive environment. International best practice points to the fact that those successful commercial corporations are managed by some form of central authority, either at ministerial level or through a central State agency.

There is also need for the Government to maximize the effectiveness of policy execution with respect to service delivery. Such sophisticated technocratic know-how is best centralized in one authority with a common repository of scarce but relevant skills. In addition, lessons learnt and successfully applied in one entity are more widely leveraged by the ease of being applied across the various entities if housed under one roof.

A centralized authority approach would also dislodge the current counterproductive commercial corporations fragmentation and will create an environment that is conducive to developing a funding model for the commercial corporations. This would provide them with a bargaining power and market influence to secure improved finance and trading terms. Their

national strategic importance, geo-political influence and transformation leverage would be enhanced and their value creation would be of national interest.

It is recommended that:

- All commercial state corporations to be managed in a purely business environment. This should be done under a Government investor to be created known as the GIC..
- The Government should develop a consolidated funding model for commercial state corporations and DFIs. This should be done collectively by the GIC and DFIs as well as the National Treasury, with the concurrence of the Cabinet.
- The National Treasury, in terms of its mandate through the GIC, must exclusively marshal and manage all liabilities of commercial and non-commercial state corporations, because they are in the end the State's contingent liabilities.
- GIC to review the status of all the State Corporations to determine the present financial sustainability versus remuneration.

Public Private Partnerships (PPPs)

One other option is the use of public/private partnerships (PPPs). Such an approach would promote direct private sector investment in projects. This could take a number of forms.

The first would involve the private sector investing equity into selected projects in order to achieve the planned outcomes. This investment can be in the form of classic PPPs – ‘build, operate, own and transfer’, as an example – but with a higher stipulated level of equity capital in order to increase affordability for users. A second would be for the private sector to invest in certain state corporation operations through vertically separating certain infrastructure and operations.

The users of infrastructure can also invest ‘equity’ in the form of long-term irrevocable ‘take or pay’ contracts, with the provision that the extent that this works will be subject to the credit quality of the issuers of these contracts. However, private sector participation a times gets complicated when it plans both to fund and operate services at the same time. To maximize chances of success, several considerations are essential.

- If an asset targeted for PPP is a monopoly, an economic regulator must be in place, especially to regulate provision of so-called economic infrastructure on a ‘user pays’ basis.
- Where there is more than one user of a monopoly economic infrastructure, the private partner selected should not also be a user of that infrastructure.
- The management of state corporations must be adequate in order to execute PPPs in the best interests of the economy and society, and ensure that the PPP results in the appropriate transfer of risks from the State and or the corporations
- In general, PPPs can be a useful tool for a rapid expansion of economic and social infrastructure, but must be handled with extreme care.

Private sector participation in partnering with state corporations to deliver on the provision of both economic and social infrastructure should be encouraged and expanded. This involvement must be through direct partnerships between the private sector and the corporations or the Government, such as Public Private Partnerships, joint ventures, or other forms of public-private collaboration and overseen by the Government Investment Corporation.

Open Market Listing in the Nairobi Securities Exchange (NSE)

Partial listing on the Nairobi Securities Exchange can offer the equity finance option.

Recommendations for Financial Sustainability of Non Commercial Government Owned Entities

This category of non commercial Government owned corporations is further classified into the following three categories:

1. Executive agencies
2. Independent Regulators
3. Public Universities, Research and Tertiary Institutions

Funding of Executive Agencies and Independent Regulators

By definition, executive agencies and independent regulators are entities that are formed by the Government to undertake strategic Government function which may not be adequately delivered within the mainstream government structure. Such bodies may be able to levy service charge for the functions that they offer to the public. However, research has showed that in most cases, a number of entities in this category are not able to generate enough funding to run both their development and recurrent expenditures in a sustainable manner.

For instance, a survey carried out by the State Corporations Advisory Committee between February, 2013 to June 2013 shows that 80% of the regulatory and executive agency bodies rely on the ex-chequer either fully or partially for funding of their development and recurrent expenditure. In 2012/2013 financial year, the Government contribution to salaries in these entities was about 6% of the total national recurrent expenditure. Notable exceptions in this category were entities like the Kenya National Examination Council, the Kenya Sugar Board and Tea Board of Kenya amongst others. Such entities were found to be levying taxes on the services they deliver through different specific legislations which allow them to do so.

It is therefore proposed that;

- All non commercial entities (state agencies) to be managed under one body known as NACAOO
- Executive agencies and regulators are allowed to levy reasonable service charge for their services
- Government through NACAOO to determine the funding gap of these entities which will then be bridged on need basis by the ex-chequer. Such funding will only be approved after thorough analysis of such funding needs as proposed by the parent Ministry in consultation with NACAOO.

Funding of Research Institutions

Since it is already proposed that research institutions be organised by sector (sector based research) and that there will be one research institution for management of research in every sector, funding of research institutions in the sectors is also proposed to be in a sector based arrangement.

An example of the Tourism sector where there is one Board of Trustees which manages tourism funding in the sector by undertaking collections and thereafter allocation to institutions of tourism development and trainings in the sector is proposed. In such arrangement, every sector should have only one Board of Trustees for purposes of fundraising in the sector, redistribution to development, promotional entities and research institutions.

Sectors with sub sectoral funding such as agriculture are proposed to have one Board of Trustees which shall, in a structured arrangement and in proportionate manner, undertake the role of funding in the sub sectors.

It is recommended that NACAOO in consultation with the respective sectors will develop policy guidelines on the funding arrangements to be used by the Board of trustees.

Funding of Public Universities and Tertiary Institutions

Across the world, Governments have pointed to the exceptional need for a more educated citizenry and the central role higher education can play in improving people's future. In Kenya, that need is critical since the general policy has for a long time sought solutions to address an undereducated population and the changing workforce and job skill demand of today's economy.

The Government introduced cost sharing in the universities and as such, only a portion of the students tuition fee is directly given to the University whereas the students foot the remaining bits. Besides the Government funding, universities have started programmes which they run commercially to bridge the funding gap between what the Government and mainstream students pay and the overall budgetary demand of the institution. However, the funding challenges still persist.

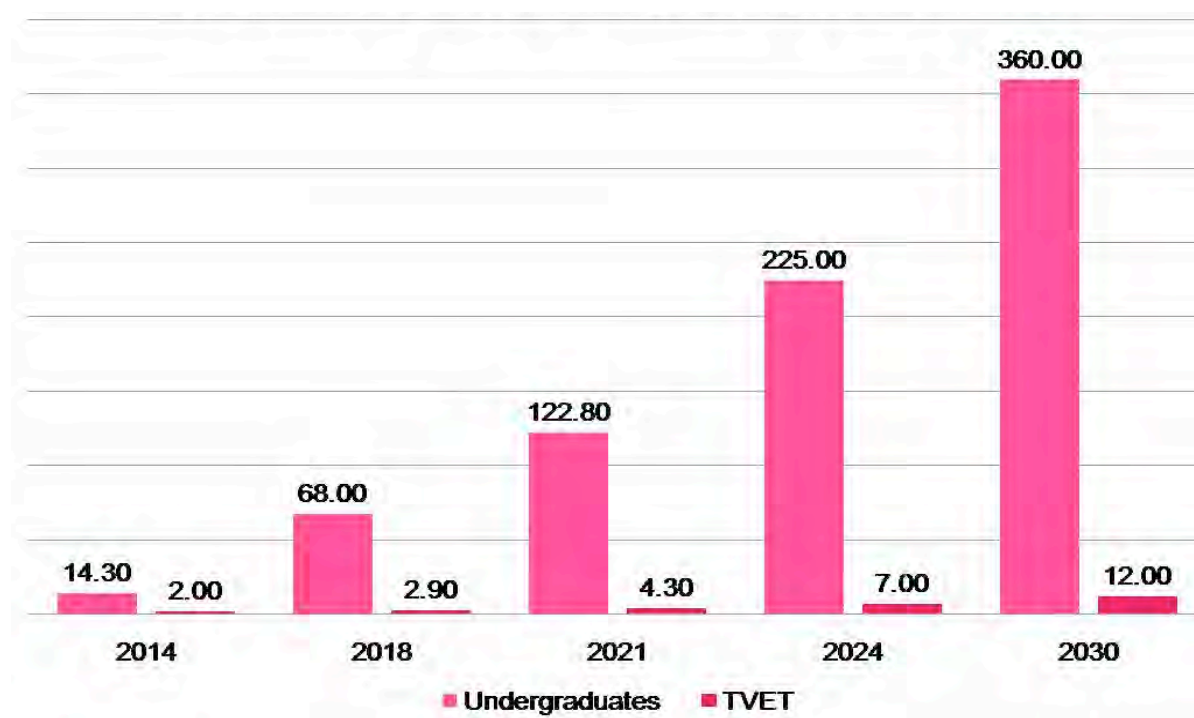
To address these challenges, there is need to usher in a comprehensive reform agenda to transform the public higher education through changes in the funding academic, fiscal and administration policies both at the Government and institutional levels. At the centre of such changes should be the need to have more Kenyans who are better educated and trained for an evolving workforce. Central to this should be a long range plan for Kenya's higher education that establishes a direct link between the Country's economic developments with its higher education system.

The fundamental question at issue is what basis a Government should allocate taxpayers' funds to public institutions. This is a question which the Government has always tried answering with the use of enrolment numbers at the University. This has resulted into a situation where as institutional enrolment grows so is the Government funding irrespective of outcomes, productivity or student learning. For instance, the table below shows the projected students enrolment and funding between the year 2013 to the year 2030.

From the above table, it is evident that university funding pegged on enrolment may not be sustainable to the Government in the long run. It is therefore proposed that;

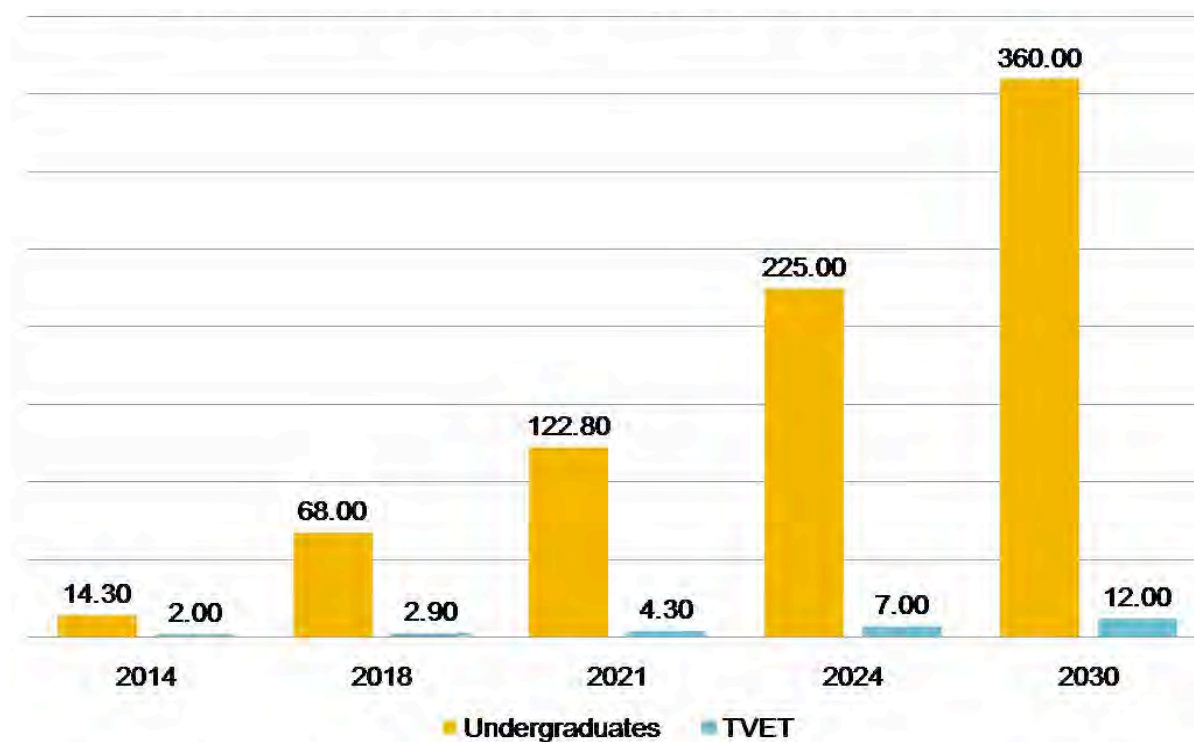
- A Policy is developed which ties University funding to outcome instead of enrolment numbers. (the Tennessee model)
- The HELB is reorganised into a vibrant organization which is able to deliver its mandate including fundraising from other sources other than the treasury allocation
- University fundings in the current arrangement to be channelled through a single source, possibly a restructured HELB
- A timeline should be fixed by which HELB or its successor will be self sustaining without further allocation from the national ex-chequer.

Chart 7.1: Projections of Student Enrolment in Need of Funding



Source: HELB Submissions to Taskforce

Chart 7.2: Estimated Funding Needs by HELB (in Kshs. Billion)



Source: HELB Submissions to Taskforce

Remuneration in Government Owned Entities

Background

Performance of GOEs is constantly under public scrutiny, in part because much of the funding and equity in them flows directly from the Country's tax base. This therefore means that these entities are accountable to the taxpayer through the taxpayer representative, i.e., the executive authority providing oversight. World over, Governments establish corporations to use as instruments for addressing the developmental needs of their countries. Proper functioning Government owned entities with sound management and remuneration practices are critical for Government in serving its citizens.

Policy Issues and Challenges

Inconsistencies of Remuneration in Government Owned Entities

Generally, the boards of state owned corporations set the specific level of remuneration of executives and senior staff in consultations with the parent Ministry and the State Corporations Advisory Committee. The latest entrant into the remuneration hierarchy is the Salaries and Remuneration Commission. However, the remuneration of the executives and senior staff of these entities is highly inconsistent, with no clear reason why in some entities they are remunerated at significantly higher levels than those of others. For instance, a survey report done by the SCAC in 2013, found substantial differences in the salary increases given to the chief executive officers (CEOs) of different entities within the same category. It is very difficult to explain varying degrees of increase in remuneration when there are no apparent reasons for such extraordinary movements. There are also noted inconsistencies in salary increments within the scales for both the CEOs and staff of these entities.

The main reason for these anomalies appears to be the absence of clear guidelines for setting the remuneration of the executives and senior staff of GOEs. In addition, where guidelines for remuneration of CEOs and senior management do exist for certain categories of GOEs, most entities in the category still manage to flout the guidelines.

Remuneration Disparities between Management and Staff

Surveys around the world have revealed that income disparity between top management and other employees is another reason that contributes to ineffective delivery of service. A closer look at the remuneration levels in the Country clearly shows a pattern where top management especially the CEOs are remunerated at levels which are almost double their immediate juniors. Such trends then trickle down the salary scales creating unethical gap between members of the same team. Often, this has been a cause for disquiet.

Such disparities are proposed to be ironed out by the proposed bodies such as GIC and NACAOO in consultations with the Salaries and Remuneration Commission. This can be done through a deliberate harmonization of terms and conditions of service in the Government owned entities under their respective jurisdictions.

Absence of a Centralized Authority to Manage Remuneration of Government Owned Entities

Presently, one of the main problems with the existing remuneration frameworks is the absence of a centralized authority to manage remuneration of the Government owned entities. Further to this are policies that are issued by different arms of the Government over remuneration. The result is that the boards and CEOs define their salaries themselves, which are then authorized by their respective Ministries thus the salaries differ significantly from the equality and/ or market line.

This approval is also guided by a set of principles including a common set of standards and a centralized set of available remuneration data (through ongoing market surveys). These

enable the Minister to give appropriate approvals; take a sound organization and job sizing approach using recognized grading systems to back up decision making; and to make ongoing benchmarking and comparisons to relevant market or industry grouping – currently a mixture of companies including State-owned enterprises, tribunals, Government-linked entities, and provincial and municipal-linked entities.

Recommendations

There should be a single remuneration policy to guide compensations in the GOEs. The essence of this remuneration policy is that there will be central authorities i.e. GIC and NACAOO which, in consultations with the Salaries and Remuneration Commission, shall apply a proper process of evaluation based on set principles and standards on which to base remuneration. Elements of the policy are proposed as follows:

- Remuneration should be calculated in a formal, transparent and coherent manner to ensure the owner's interests (and those of the taxpayers) are protected;
- Remuneration packages should not create perverse incentives, i.e., huge short-term driven pay-outs where performance and achievements do not align with monies paid;
- The Government, boards and or any created remuneration bodies must ensure a proper risk sensitive approach in setting remuneration, and should also ensure that claw-back mechanisms are in place to recoup monies paid to executives based on unsubstantiated performance which later proves not to be a fair reflection.
- May have a little package for short-term incentive; and
- Provide for cost of living adjustments.
- For Commercial Corporations, the international best practice is to align remuneration to the market in order to attract and retain suitable professionals for the large commercial entities.

CHAPTER EIGHT

REORGANIZATION OF GOVERNMENT OWNED ENTITIES

State Corporations and their Role in National Development

Social and Economic Role of the State

The state intervenes to promote economic and social development within the contours of a country's unique socio-economic and political circumstances. It may do so by providing a facilitative environment to the private sector and regulating it while abstaining from undertaking direct production through enacting suitable economic policies. Alternatively, it can undertake production but refrain from imposing controls on the private sector. Tabellini (2004) has argued that government incentives to enact sound policies are key to economic success¹⁰. Mengisteab and Logan as referenced by Matlosa (2002) rightly remind us that no single system in the whole world has a completely laissez faire market. Complementarity between the state and market is essential in that:

Resource allocation by the self-serving state is clearly incompatible with socioeconomic development. However, the market's trickle down process, by itself, is also insufficient to redistribute resources in a manner that would alleviate poverty, transform the larger subsistence sector and promote an environment friendly system of production. Hence a democratic state that would be more likely to allocate resources in response to social needs becomes imperative (1995:292).

In respect of Africa, Sandrook (1993) argues for active, developmental states capable of complementing and directing market forces. Hwedi (nd)¹¹, in reviewing five African economies of Angola, Botswana, Malawi, Mauritius and Zambia notes that in these countries complementarities between the state and market forces has paved the way for the promotion of national development and the importance of politics in Botswana and Mauritius. Thus, the congruence between political systems and choices of economic policies is very important.

In this regard, therefore, Pillay (2002)¹² has suggested that the relevant question now is: what is the appropriate nature and scale of state intervention desirable for economic development? Two main views on the role of the state in economic development emerge. The first view relates to a "facilitative role" that the state can play in a country's economic development. The second view is associated with the "directive interventionist" role of the state. Therefore, the place of state owned enterprises should be based on some clear consensus as to what the role of the state in national development should be.

The Nature of the Developmental State

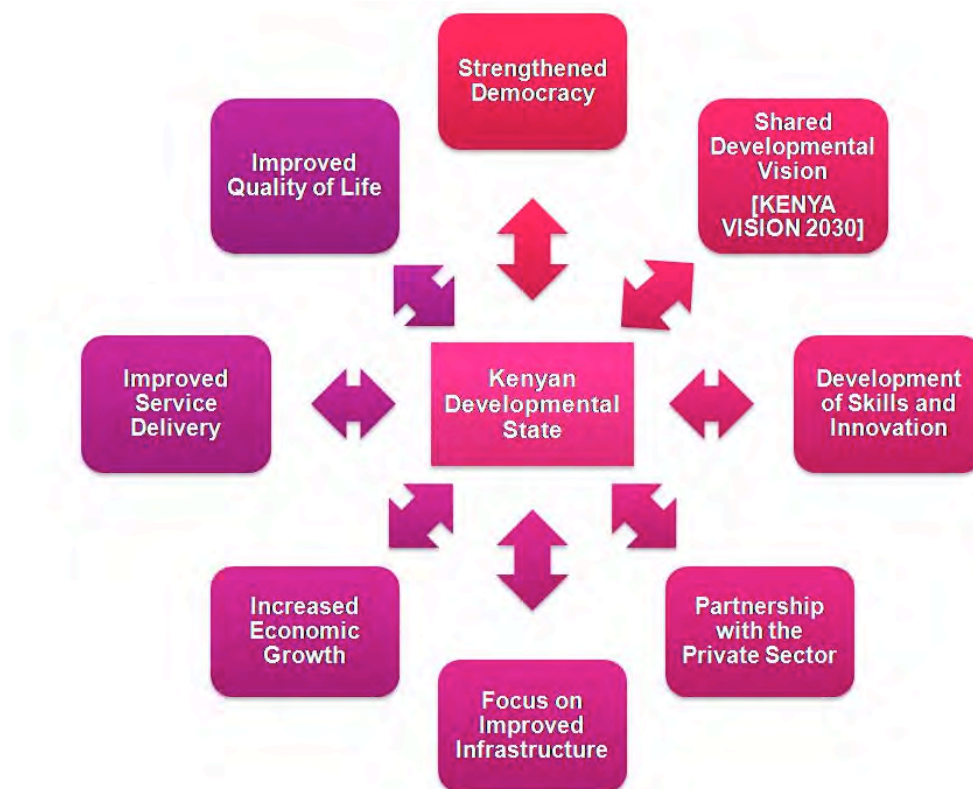
According to the Presidential Review Commission on State Owned Enterprises, a Developmental State provides a framework for developing an overarching agenda for SOEs. In their review, a Developmental State is one in which:

- Government is intimately involved in the macro and micro economic planning and implementation in order to grow the economy in a steady but rapid manner (Onis, 1991). It has generally been observed that successful Developmental States are able to advance their economies much faster than regulatory States (States that use regulations to manage the economy) (Marwala, 2006).
- the political elites aim at rapid economic development and give power and authority to the bureaucracy to plan and implement efficient policies. A high rate of economic

growth legitimizes the centralized State apparatus (Abe, 2006), and is generally known as State capitalism.

- relatively free market economies such as that of the United States exist (Johnson, 1982, p. 10).

Chart 8.1: Characteristics of a Developmental State



Source: Adapted from the PRC Report Volume II

The Developmental State aims at rational and deliberate development and implements State driven economic and industrial policies, with cooperation between the Government and private enterprise. The Developmental State contrasts with the ‘regulatory State’s

As illustrated in Chart 8.1, eight characteristics defining a developmental state are described. A review of these characteristics reveals a close resemblance to Kenya Vision 2030 and represents some of the development priorities emerging out of the Constitution of Kenya 2010 as well as the programmes envisaged under the Second Medium Term Plan of Kenya Vision 2030.

Sectoral Reorganisation of Government Owned Entities

The fluid and ambiguous definition of State Corporations coupled with failure by actors within government to adhere to the process of establishing these entities over the years led to proliferation of State Corporations. Subsequently, the present number of State Corporations is at an unsustainable level given that over 50 percent of them depend on the exchequer. In addition to growing strain on the exchequer, the proliferation has resulted to duplication and overlap of functions between State Corporations and Government Ministries. It has therefore become necessary to review and rationalize Government Owned Entities with a view to consolidate functions and remove overlaps and duplications.

The purpose and rationale of this consolidation, rationalisation and therefore reorganisation will be to:

- increase efficiency and effectiveness;
- rationalize areas of overlapping mandates;
- improve service delivery;
- enhance the ability of public agencies to meet their core regulatory and developmental mandates; and
- maximize the contribution to sectoral and national development goals under Kenya Vision 2030.

To satisfy this objective, Government Owned Entities were examined within ministries and sectors where they are domiciled.

The Taskforce recommends ***consolidation of key public agencies, with minor exceptions as an overarching policy recommendation***. The exceptions will be to accommodate the special requirements of specific priority sectors. The purpose and rationale of consolidation is to increase efficiency and effectiveness; rationalize areas of overlapping mandates; improve service delivery; enhance the ability of public agencies to meet their core regulatory and developmental mandates; and maximize contribution to sectoral and national development goals under Vision 2030 and the Jubilee Manifesto.

Investment and Financial Sector

The Taskforce adopted as an overarching policy recommendation the rationalization of State Agencies through consolidation of agencies in priority sectors, most notably regulatory agencies in the financial services sector; development finance institutions; investment promotion and marketing agencies; and agencies that support small and medium sized enterprises.

The Taskforce further recommends the eventual consolidating of development financial institutions and investment promotion and marketing agencies into a single Kenyan Economic Development Board responsible for conceiving, planning, analysing and executing the nation's economic development agenda. This would be a second phase of the reforms that the Taskforce envisages to be completed within 12 months of the first stage consolidation measures.

Accordingly the Taskforce recommends consolidation of key regulatory and development agencies in the Financial Services Sector, Development Finance Institutions (DFIs), Investment Promotion Agencies (IPAs) and SME development Agencies. The Taskforce recognized the need for minor exceptions to the overarching policy to accommodate the special requirements of Project Execution Agencies.

Consolidating Financial Sector Regulators

The Taskforce recognizes the need to retain bank supervision under the Central Bank of Kenya while consolidating other financial regulators in the securities, insurance, pensions and financial cooperatives sub-sectors. This is consistent with the growing international consensus and best practices (following the recent global financial developments) of monetary authorities retaining oversight and supervision of banking sector.

The financial services sector has a unique and important “dual” role under Vision 2030 as a priority sector and destination for investment in its own right; as well as the role of mobilizing capital and investments to finance the nation's flagship projects. The underlying rationale for consolidating the financial sector regulatory agencies, namely CMA, IRA, RBA and SASRA under a single unified ***Financial Services Council***, is the increasing integration and convergence in the financial services industry of products, services and providers in a

liberalized and deregulated sector. This is increasingly blurring the lines between banking, insurance, capital markets and long term pensions sectors. Many financial sector providers are increasingly producing and distributing financial products and services traditionally associated with other subsectors, for example bancassurance, universal banking, and in the process becoming financial conglomerates or universal financial supermarkets. Technology including telecoms platforms, mobile banking and the internet is also driving convergence of the financial services locally, regionally and globally. Consolidation of the financial sector regulators would address the need to increase efficiency and effectiveness of supervision, particularly consolidated supervision; improving information sharing among regulators which is likely to be more effective under a single unified structure; and minimizing the potential for regulatory arbitrage - one of the regulatory gaps that was, in part, a leading cause of the global financial crisis of 2007-2008 which was exploited by global financial conglomerates. Consolidating domestic financial sector regulators is a natural evolution of Kenya's financial services industry from a traditionally compartmentalized and fragmented industry to a highly sophisticated industry that can effectively respond to regional financial and monetary integration, develop the Nairobi International Financial Centre (NIFC); and propel Kenya to be the regional financial services hub.

The Taskforce recommendation for consolidating financial sector regulators provides a good basis for further development of a robust Macro Prudential Supervisory regime in Kenya and regionally for addressing and monitoring systemic financial stability.

Consolidating Development Financial Institutions (DFIs)

The principal rationale for consolidating the Development Financial Institutions (DFIs) under the proposed Kenya Development Bank (KDB) in an initial first phase is the need to create a single, cross-sector DFI with sufficient scale, scope and resources to play a catalytic role in Kenya's economic development through providing long-term financing and other financial, investment and business advisory services to meet the objectives set under Vision 2030. KDB will help to address a critical gap in the market for long term finance in such sectors as infrastructure, agriculture and agro-industry that cannot be met by commercial banks that rely on short term deposits for their financing. The single unified DFI will be able to offer, in addition to long term finance and business advisory services, training and capacity building for large scale businesses and industry to enhance their operational efficiency and growth prospects. It will adhere to generally accepted principles and prudential standards applicable to DFIs (for example the AADFI standards of the Association of Africa DFIs) that will result in a strong and reformed DFI that is dynamic and able to adjust and evolve in line with the needs of the market and its clients.

The reform proposed by the Taskforce will radically restructure and rationalize the operations of the existing DFIs and enable the resulting single consolidated DFI to address the country's long-term financing gap while enabling appropriate regulation and supervision (e.g. as proposed in the current DFI Bill by CBK under delegated powers from the National Treasury). The restructuring will strengthen the capital base of the nation's DFI's, improve asset quality, improve risk management through diversification by industry, sectors and tenors; and reduce the sectoral over-concentration that the fragmented DFIs are currently exposed to and strengthen the management of the single DFI and enhance corporate governance.

At present Kenya's DFIs are not significant players in Kenya's vibrant financial markets. They remain of modest size (accounting for less than 1% of banking sector Assets) and suffer from weak management. In the first 15-20 years of their existence the five DFIs made a significant and vital contribution to Kenya's early post-Independence development. However, from the mid-1980s the quality of their performance began to deteriorate in both financial terms and also in the ability of the DFIs to deliver effectively on their mandates. Several reasons led to the decline.

The interventionist mode: The five existing DFIs were established in the 1960s and 1970s at a time when the government felt the need to intervene in the market through policies of controlling prices, and interest rates and foreign exchange allocation. The DFIs were unable to transition successfully through the policies of liberalization, privatization and de-regulation in the early 1980s and 1990s. They found it difficult to adjust to the changed marketplace and progressively declined.

Narrow Credit Focus: The five existing DFIs were conceived narrowly as credit institutions and were not designed to mobilize resources effectively in order to ensure their own long-term sustainability. The DFIs were further designed to rely on a narrow base of financing that were primary (i) credit lines and equity from external donors; and (ii) loans and grants from government through domestic budget allocations. The narrow focus on extending credit instead of providing a broad range of financial products and services made it difficult for the DFIs to retain clients or become self-sustaining. Hence the DFIs suffered when the Government budgets came under pressure and stress in the mid-1980s from the global oil shocks and the ensuing debt crisis. The tighter fiscal budgets that resulted made it harder for DFIs to access Government funding from the early 1980s. In parallel with tight government finances, changing donor attitudes made it harder for DFIs to access international credit lines – leading to lower financing. Inevitably, the DFIs descended into poor corporate governance, in part, through Government interference; coupled with ineffective management, low staff morale and weak financial conditions. The existing DFIs thus have not been able to respond to the challenges of a liberalized and de-regulated environment.

The establishment of the KDB will improve how state ownership over the DFIs is exercised and is consistent with successful DFIs with 100% state ownership like the Development Bank of Southern Africa (DBSA) and the Industrial Development Corporation (IDC). The proposed restructuring will provide KDB with the autonomy and capacity to make sound operational and financing decisions while aligning its goals with the economic development programs of Kenya.

Consolidating Investment Promotion Agencies (IPAs)

The principal rationale for consolidating Investment Promotion Agencies (IPAs) under the proposed Kenya Investment Corporation (KIC) is to create a single, cross-sector IPA with sufficient scale, scope and resources to effectively and efficiently promote and market the country, increase domestic and foreign direct investments; and provide a seamless and empowered One-Stop-Shop for all Investor Services. The single IPA's activities would span the entire range of investor services from marketing, investor acquisition, issuing of licenses and permits, investor management and aftercare services; and other investment and business advisory services that improve the business and investment climate or are necessary for Kenya to meet the objectives set under Vision 2030. KIC will help to address a critical gap in the market for investor information and facilitation, and specifically the need for efficient management of Investment Promotion and marketing consistent with Kenya's broad investment policy objectives under Vision 2030.

An effective single national IPA will play a critical role in promoting investment and influencing the nation's investment policies. It will help to articulate and develop a consistent investment promotion strategy for Kenya that adjusts to emerging national, regional and global trends and challenges, especially the growing influence of regional trading blocs, rising South-South trade and the emerging dominance of new trading and investment powerhouses like the BRICs nations.

Kenya's Economic blue print, Vision 2030, places a critical role of investment in economic growth, and targets increasing investments to 27% of GDP by 2030, with the private sector accounting for 24% of that investment. The ultimate policy objective of creating KIC is to contribute to the country's economic development objectives and investment goals; maximize the benefits of international investment and link local enterprises to global value chains. The creation of the KIC will focus and align Kenya's investment promotion and marketing

policies and programs; including (i) promoting and increasing domestic and Foreign Direct Investment (FDI) flows, (ii) aligning investment promotion and marketing with private sector development (iii) fostering sustained wealth creation, and (iii) enhancing the delivery of investment information and investor support services to

domestic and international investors.

Taskforce Recommendations for Financing and Investment Agencies		
FIRST GENERATION REFORMS		
KENYA DEVELOPMENT BANK (KDB)	KENYA INVESTMENT CORPORATION (KIC)	BIASHARA KENYA (BK)
KIE	EPC	SME Fund
IDB CAPITAL	KENINVEST	Youth Enterprise Fund (YEF)
ICDC (Including ICDC Investments)	KTB	Women's Enterprise Fund (WEF)
KTDC (TFC)	BRAND KENYA BOARD	UWEZO Fund
AFC		
DFIs – Financing larger scale investments, corporations and development projects	Investment Promotion and Marketing Agencies (IPAs)	SME Support, facilitation, financing, capacity building
KENYA EXPORT IMPORT BANK (EXIMBANK)		

Kenya's current investment promotion and marketing framework is fragmented by sectors and activities and is riddled with overlapping mandates. It is spread among many disparate agencies and administered through numerous policies, regulations and legislations spanning several Ministries and sectors. The existing IPAs include the Export Processing Zones Authority (EPZA), Export Promotion Council (EPC), Kenya Investment Authority (KenInvest), Kenya Tourist Board (KTB), Brand Kenya Board (BK) and the Vision Delivery Secretariat (VDS). These Government agencies charged with the responsibility of investment promotion and facilitation have overlapping mandates, duplicate each other's efforts and represent inefficient and ineffective use of scarce taxpayers' money. Today a foreign or domestic investor wishing to start a cement plant in Kenya (as an example) faces ambiguity and confusion on the agencies that will handle the investor, provide all necessary licenses and permits; and faces endless delays and hurdles before the investor can commence business. Despite the existence of many IPAs, investors still face an "information" gap that creates "regulatory or investment arbitrage."

Taskforce Recommendations for Financing and Investment Agencies		
SECOND GENERATION REFORMS		
KENYA ECONOMIC DEVELOPMENT BOARD (EDB)		BIASHARA KENYA (BK)
KENYA DEVELOPMENT BANK (KDB)	KENYA INVESTMENT CORPORATION (KIC)	
KIE	EPC	SME Fund
IDB CAPITAL	KENINVEST	Youth Enterprise Fund (YEF)
ICDC (Including ICDC Investments)	KTB	Women's Enterprise Fund (WEF)
KTDC (TFC)	BRAND KENYA BOARD	UWEZO Fund
AFC		
Economic Development Board advises, recommends and executes development ; and includes DFIs for Financing large scale investments, corporations and development projects; Investment Promotion and Marketing Agencies (IPAs)		SME Support, facilitation, financing, capacity building

The existing framework does not provide a consistent framework for promoting Kenya as a competitive and attractive investment destination for FDI. The fragmented nature of the existing IPAs has resulted in Kenya's inability to attract quality investment into the productive, "real" sectors of the economy and to increase linkages and subcontracting between domestic firms and SMEs on the one hand, and global MNCs and global value chains.

Kenya requires a single, consolidated IPA to deliver investor services more effectively and efficiently, attract FDI from leading global investors, and align investments with the nation's development objectives. The single, consolidated IPA needs to enhance the interactions between foreign and domestic firms, ease the entry of FDI into the country and region; and assist domestic firms to improve their performance, particularly in exporting.

Kenya Economic Development Board (K-EDB)

As a follow up stage the Taskforce recommends the establishment of the Kenya Economic Development Board (K-EDB) to consolidate and merge the Kenya Development Bank (KDB) and Kenya Investment Corporation (KIC) so as to create a single agency responsible for conceiving, analyzing, planning, financing and implementing the nation's economic and investment policies and implementing Kenya's development agenda.

The final position after the TF recommendation is as shown below.

KENYA ECONOMIC DEVELOPMENT BOARD (K-EDB)		BIASHARA KENYA (BK)
KENYA DEVELOPMENT BANK (KDB)	KENYA INVESTMENT CORPORATION (KIC)	Youth Enterprise Fund (YEF) SME Fund Women's Enterprise Fund (WEF) UWEZO Fund SME Support, facilitation, financing, capacity building

SMEs, Youth and Women Owned Enterprises

Kenya's economic blueprint, Vision 2030, recognizes the critical role that SMEs play in the nation's economic growth and development. However, Kenya continues to have a fragmented approach to supporting, financing and developing small and medium sized enterprises (SMEs), particularly those owned and managed by youth, women and minorities. The Ministry of Industrialization and Enterprise Development houses the newly created Small and Micro Enterprises Authority. The Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF) and the recently launched KSh.6 Billion UWEZO Fund for supporting youth and women enterprises are domiciled in the Ministry of Planning and Devolution. An SME Fund for Kshs. 3.8bn (with Kshs. 1 billion disbursed) was managed under the National Treasury. All these Agencies, Funds and initiatives have the same objective of developing small and medium scale enterprises.

The Taskforce recommends the creation of Biashara Kenya to merge and consolidate all agencies, funds and initiatives for supporting, financing and developing SMEs, including the Micro and Small Enterprises Authority, Youth Enterprises Development Fund (YEDF), Women Enterprise Fund (WEF), the SME Fund, the Uwezo Fund and related funds, initiatives and programs.

Box 8.2: Establishment of Biashara Kenya as the Principal SME Agency

The *policy foundations* for creating Biashara Kenya as the Government's principal agency for developing SMEs, including Youth, Women and minority- owned businesses, is based on Vision 2030. This recognizes the critical role that SMEs play in the nation's economic development, especially in the priority sectors of manufacturing, wholesale and retail trade and ICT/BPO.

The Overarching Objectives of establishing Biashara Kenya are to enhance economic participation of SMEs, Youth, Women and Disadvantaged Groups, including persons with disabilities and marginalized communities; and to provide facilitation, financing, training and skills development. Biashara Kenya's mandate will be to empower Youth, Women and the small enterprises that employ the majority of Kenyans. Its activities and impact are envisaged to go beyond SME financing to encompass an agency that encourages investments in Youth, Women and small enterprises. While its roles will evolve over time, the *Biashara Kenya* will remain a critical link between SMEs and the nation's ICT and manufacturing policies and programs. It may, for example, assist in the development of SME Parks, support BPO activities and Government will use it help integrate small businesses into the supply chains of larger domestic, regional and global markets and corporations.

Biashara Kenya role in developing SMEs in the Manufacturing Sector is expected to include strengthening SMEs to become the key industries of tomorrow by improving their productivity and innovation; boosting Science, Technology and Innovation (STI); developing at least five SME Parks as flagship projects in key urban centres; providing relevant infrastructure, facilities and services and developing ICT/BPO sector as a major source of employment for youth and young professionals. The Agency will also be tasked with supporting and formalizing the wholesale and retail trade sector by providing SMEs with secure business locations; credit and capacity building; and access to information, labour and capital so as to integrate SMEs into regional and global markets.

Biashara Kenya will target specific interventions to SMEs, Youth and women owned enterprises. These can be achieved by providing credit; capacity building and training in relevant skills; improving efficiency by reducing the number of players between producers and consumers; creating formal market outlets SMEs to graduate them from the informal sector; encouraging investment in retail trade; developing outreach programs to expand retail trade; and developing training programs to improve retail skills. Other flagship initiatives to empower Women, Youth and SMEs include expediting the on-going efforts of building digital villages; managing allocations from national revenue to Youth and Women's Enterprise Funds; increasing access to finance individually and in Groups without traditional collateral requirements; managing the youth-specific affirmative action on Government procurement that has been recently introduced especially the special reservations of 30% of public procurement to be allocated to youth, women and SMEs.

Establishing Biashara Kenya and Consolidating SME Agencies and Funds

The principal rationale for Establishing Biashara Kenya and consolidating the SME Agencies and Funds is to create a single SME Agency charged with the role and responsibility of delivering all support, financing, capacity building, and training and skills development programs for Youth, women and SMEs. The principal objective of establishing Biashara Kenya is to:

EXISTING YOUTH, WOMEN'S AND SME AGENCIES Fragmented agencies targeting specific segments of Youth, women and SMEs; ineffective agencies	TASKFORCE RECOMMENDATION Single, cross- sector, integrated National SME Agency with a clear mandate
SME FUND	BIASHARA KENYA
YOUTH ENTERPRISE FUND (YEF)	
WOMEN'S ENTERPRISE DEVELOPMENT FUND (WEDF)	
UWEZO FUND	
SME ACT that creates Micro & Small Enterprises Authority Micro & Small Enterprises Development Fund Registrar of Micro & Small Enterprises	

- enhance economic participation of SMEs, Youth, Women and Disadvantaged Groups, including Persons With Disabilities (PWDs) and marginalized communities; and
- provide support, facilities, training, and skills development to enhance productivity and sustainably improve standards of living to drive Kenya towards a middle income country with a high standard of living.

Biashara Kenya's intended mandate is to empower Youth, Women and the SMEs that provide a livelihood to the majority of Kenyans. It is designed to be the Government's principal agency for developing and financing SMEs and integrating small businesses into the supply chains of larger domestic, regional and global enterprises. Biashara Kenya in its activities is expected to go beyond SME financing to encompass encouraging investments in Youth, Women and small enterprises. It will be a critical agency for linking SMEs with the nation's ICT policies and programs.

The policy foundations for creating Biashara Kenya as a dedicated agency for development of SMEs, including Youth, Women and minority- owned businesses, is based on Vision 2030. It recognizes the critical role that SMEs play in the nation's economic development in the priority sectors of Manufacturing, Wholesale and Retail Trade and ICT/BPO. Biashara Kenya can play a critical role in developing the Manufacturing Sector by developing SMEs to become the key industries of tomorrow; Increasing investment in R&D to boost Science, Technology and Innovation (STI); developing SME Industrial Parks as flagship projects in key urban centres; developing ICT/BPO sector as a major source of employment for youth and young professionals.

Biashara Kenya's activities may span the provision of secure business locations; credit and capacity building; access to information, labour, capital and markets; and integrating SMEs into regional and global markets. It can help to improve efficiency by reducing the number of players between producers and consumers; graduate SMEs from the informal sector; encourage investment in retail trade; developing outreach programmes that expand retail trade; and develop training programmes to improve retail skills.

Finance and Investment

In the finance and investment segment it is noted that there are five (5) State Corporations, ten (10) Executive Agencies, and four (3) Independent Regulatory Agencies under the National Treasury. There are other development finance institutions in Tourism, and Industrialization that should be brought under the National Treasury and consolidated into a more effective body.

Banking and Deposit Taking Microfinance (DTMs)

The Taskforce recommends retaining the existing regulatory and institutional framework where the Central Bank of Kenya (Bank Supervision Department - BSD) regulates and supervises financial institutions licensed under the Banking Act Cap 433 (Commercial Banks and Credit Reference Bureaus (CRBs); the Microfinance Act (Deposit Taking Microfinance Institutions); the Central Bank of Kenya Act Cap 491 (Forex Bureaus) and entities proposed to be regulated under the National Payments Systems (NPS) Act like Money Transfer Operators.

Capital Markets, Insurance, Retirement Benefits, and SACCOs

The Taskforce recommends consolidating the regulatory and supervisory functions in the Capital Markets, Insurance, Pensions and Retirement Benefits, and Sacco sectors (collectively Financial Service Sector Regulators) under the Financial Supervisory Council, while retaining the independence of each of the sub- sector regulators. This will provide greater efficiency and effectiveness; and provide the benefits of consolidated supervision which include minimizing regulatory arbitrage in the financial services industry where many large financial institutions increasingly offer universal financial services under one roof.

Kenya National Assurance (2001)

The Kenya National Assurance Company (2001) was established to wind up the life Fund and business of the defunct Kenya National Assurance and has perpetuated itself from creation. The company should wind up its activities by the end of December, 2013 as it is not intended to take up new business.

EXISTING FINANCIAL SECTOR REGULATORS	TASKFORCE RECOMMENDATION:
CBK	CBK
CMA	FINANCIAL SERVICES COUNCIL (Financial Services Council that consolidates Financial Services Regulators other than banking supervisor)
IRA	
RBA	
SASRA	

Revenue Collection

The formation of Kenya Revenue Authority integrated revenue collection and customs department leaving out immigration services. Best practice has shown that customs and immigration are usually integrated for effective border management and control. A review of the submissions from stakeholders identified two options. One was to retain the status quo and continue efforts aimed at strengthening customs within the KRA. This was buttressed by the fact that customs revenues formed a significant part of national revenues. The second view was that in other jurisdictions, immigration and customs operate under one docket for purposes of control of movement of goods at entry points. Given the emerging security imperatives, the Taskforce observed that customs would be more effective if brought to work closely ***with the Kenya Citizens and Foreign Nationals Management Service*** for purposes of providing a unified and seamless management of customs, immigration and border security and control.

It is therefore recommended that the Kenya Revenue Authority (KRA) should be renamed ***the Internal Revenue Service (IRS)*** and the functions of its Customs Department transferred to ***the Kenya Citizens and Foreign Nationals Management Service***, creating a new ***Customs, Border Management and Security Service***. However any revenues arising from Customs and Border management activities shall be collectable by the Kenya Revenue Authority.

Development Finance Institutions (DFIs)

Kenya established DFIs between 1954 and 1973 with the objective of providing long-term finance for economic development. Over the years, DFIs have faced severe structural and operational challenges and are currently unable to deliver on their mandates in Kenya's liberalized and competitive financial markets.

The Taskforce recognizes that Cabinet in 2006 directed the development of a credible and sustainable reform strategy for DFIs consistent with building a market-based financial system and in line with Vision 2030. The reform strategy currently under development proposes a proposed single legal framework for regulation and supervision of DFIs, and outlines the principles and prudential standards for DFIs to be financially and operationally self-sustaining. It requires DFIs to be refocused on providing long-term financing and a broad range of competitive financial products and services.

There is a continuing need for an effective National DFI with adequate resources to play a catalytic role in the growth and development of the economy and the private sector. The national DFI should combine public and private resources in effective ways to address the gaps in the market for long term (and developmental) funding. The DFI would need to be financially and operationally strong to enable it to assist the Government, when required, in channelling economic interventions and targeted investments into the seven (7) priority sectors. Its operations would conform to sound commercial principles, strong corporate governance and the provision of a broad range of financial products and services. The envisaged DFI would also be compliant with Prudential Standards and Guidelines applicable to DFIs as recommended by the Association of African Development Finance Institutions (AADFI).

Accordingly, the Taskforce recommends that the Government consolidate the DFIs as follows:

EXISTING DFIs Fragmented, sector-specific, ineffective DFIs with overlapping mandates	TASKFORCE RECOMMENDATION Single, cross- sector, integrated National DFI with a clear mandate
Kenya Industrial Estates (KIE)	KENYA DEVELOPMENT BANK (KDB)
IDB Capital	
Industrial & Commercial Development Corporation (ICDC)	
Kenya Tourism Development Corporation (KTDC)	
Agricultural Financial Corporation (AFC)	
No Existing Agency for financing exports	KENYA EXPORT IMPORT BANK (EXIMBANK)

- Create the Kenya Development Bank (KDB) as an integrated, cross-sector national DFI to operate across all Priority Sectors under Vision 2030 by merging the Kenya Industrial Estates (KIE); IDB Capital; Industrial and Commercial Development Corporation (ICDC);

Agricultural Finance Corporation (AFC); and the Tourism Finance Corporation (TFC) established under the Tourism Act 2012.

- Create the Kenya Export-Import Bank (Kenya EXIMBANK) to promote Kenya's exports through the provision of export and import finance and related supporting activities.

Financial Reporting Centre (FRC)

The Financial Reporting Centre (FRC) was established under the Proceeds of Crime and Anti-Money Laundering (AML) Act 2009 to support the implementation of an effective regulatory regime to curb money laundering and combat the financing of terrorism. The AML law created the Financial Reporting Centre (FRC), the Anti-Money Laundering Advisory Board and the Asset Recovery Agency. The FRC became operational on 12th April 2012 and works under the strategic guidance of the Anti-Money Laundering Advisory Board (AML Board) established on 24th June 2011. Kenya seeks to maintain a credible AML/CFT regulatory and reporting framework that meets international standards and best practices. Hence the FRC needs the requisite independence (operational and financial autonomy) to enable it to discharge its mandate effectively and efficiently which contributes to ensuring the stability and integrity of the financial system. The Taskforce accordingly recommends that the FRC retain its current regulatory and institutional framework under the AML Act, and be accorded a high degree of independence as a regulatory agency of the National Treasury that collaborates closely with the Central Bank of Kenya (CBK). The FRC should bear a similar classification as the independent financial sector regulatory agencies.

Privatization Commission

The Privatization Commission is a corporate body established under Section 3 of the Privatization Act (2005) to:

- Formulate, manage and implement the Privatization Programme;

- ii. Make and implement specific proposals for privatization in accordance with the Privatization Programme;
- iii. Carry out such other functions as are provided for under the Act; and
- iv. Carry out other such functions as the Commission considers advisable to advance the Privatization Programme.

This entity should have been established with a sunset clause for closure at the end of the programme, but was established as a permanent body by default. After establishment of Government Investments Corporation (GIC) there will be no compelling reason to retain the Commission. In this regard it is recommended that the functions of the Privatization Commission should be transferred and vested in GIC.

Industrialization and Enterprise Development

Investment Promotion Agencies (IPAs)

The Ministry of Industrialization and Enterprise Development is responsible for promoting exports and investments, and the development of an enabling environment for domestic and international investors, particularly in attracting Foreign Direct Investors (FDI). It hosts the Export Processing Zones Authority (EPZA) responsible for promotion and facilitation of Export Processing Zones. It also has a number of agencies for promoting investments. The Export Promotion Council (EPC) promotes Kenya's products for exports. Other agencies that have a mandate for promoting and marketing Kenya as an investment destination include Brand Kenya Board (for promoting Kenya as a brand); the Kenya Investment Authority (attracting investments), and Kenya Tourist Board (promoting investment in Tourism). There would be synergy and efficiency if the agencies involved in marketing and promoting Kenya are merged into one entity.

Box 8.2: Reorganisation of Investment Promotion Agencies	
EXISTING IPAs Fragmented, sector-specific, ineffective IPAs with overlapping mandates	RECOMMENDATION: Single, cross- sector, integrated National IPA with a clear mandate
Export Promotion Council (EPC)	KENYA INVESTMENT CORPORATION (KIC)
Kenya Investment Authority (KenInvest)	
Kenya Tourist Board (KTB)	
Brand Kenya Board (BK)	
Export Processing Zones Authority (EPZA)	SPECIAL ECONOMIC ZONES AUTHORITY (SEZA)

The Taskforce recommends that:

- ***The Kenya Investment Corporation (KIC)*** be created by merging and amalgamating the mandates and functions of the investment promotion and marketing agencies, namely the Export Promotion Council (EPC), Kenya Investment Authority (KenInvest), Kenya Tourist Board (KTB), Brand Kenya Board (BK).
- The Special Economic Zones Agency (SEZA) proposed as the successor to Export Processing Zones Authority (EPZA) be retained as a specialized industrial development and export promotion agency responsible for attracting investments into Kenya's SEZs particularly FDI, as well as regulation, development, and marketing of special economic zones (SEZs).

Agriculture, Livestock and Fisheries

Regulation of Scheduled Crops

The Government establishes Independent Regulatory Agencies to develop and enforce standards necessary for ensuring smooth running of the economy and for development of

sectors that are critical to national development. These agencies are in most cases also responsible for development and promotion activities and most of them are financed through levies from the sectors they regulate.

The Agriculture Food and Fisheries Authority (AFFA) Act 2013 effectively amalgamated Coffee Board of Kenya, Tea Board of Kenya, Sugar Board of Kenya, Cotton Development Authority, Pyrethrum Board of Kenya, Horticultural Development Corporation, Sisal Board of Kenya, and Kenya Coconut Development Authority into one regulator. There will be no need to establish another body for crop regulation and ***AFFA should therefore be retained as a regulator for horticulture and scheduled crops while the mandate of the Kenya Plant Health Inspectorate Service is enhanced to include regulation on Genetically Modified Organisms.***

The functions of the dissolved regulators included promotion development and marketing of the crops and this function is not adequately covered in AFFA. It is therefore recommended that the Government establishes ***Crops Development and Promotion Services***, to take over development and promotion of scheduled crops. In the case of Pyrethrum Board of Kenya the Commercial function should be moved to Government Investment Corporation (GIC) where the decision for full commercialization should be considered.

Meanwhile, the National Irrigation Board should be reinstated without the agricultural regulation mandate, as an executive agency for purposes of expanding irrigated agriculture necessary for food sufficiency in the long term.

Agricultural Development Corporation (ADC)

It is noted that the Agricultural Development Corporation has established through incorporation an entity by the name Lands Limited that owns land on behalf of ADC. It is observed that the Lands Ltd is a paper company that has never been operationalised. It is therefore imperative for ADC to immediately determine the Lands Ltd and assume ownership of all the ADC Lands.

The Kenya Plant Health Inspectorate Service

The Kenya Plant Health Inspectorate Service Act 2012 established the Kenya Plant Health Inspectorate Service with a mandate to, among other things, regulate matters relating to plant protection, seeds and plant varieties, administer and enforce sanitary and phytosanitary measures and support the administration and enforcement of food safety measures. This function was however transferred to the Agriculture Food and Fisheries Authority (AFFA) Act 2013. It has been noted that the function is not rightly placed in AFFA as KEPHIS is an enforcement agency and would, under normal circumstances oversight some functions of AFFA with regards to standards. It has also been noted that KEPHIS has a role in regulation of Genetically Modified Organisms, a function that is also carried by the National Biosafety Authority.

In view of the need for consolidation and greater efficiency, it would be prudent to retain KEPHIS separately from AFFA and merge it with the National Biosafety Authority to form Kenya Plant and animal Health Services. In this regard, it is recommended that:

Kenya Plant Health Inspectorate Service be reinstated and its mandate be enhanced to include regulation on Genetically Modified Organisms. This should lead to a merger of the Kenya Plant Health Inspectorate Service and the National Biosafety Authority.

Livestock Subsector

In livestock subsector policy and regulation are largely retained in the ministry. The Kenya Dairy Board regulates the dairy industry but there is no regulator for livestock and other related products. In this regard there is a need for the Government to establish a ***Livestock Regulatory Authority***, as an agency for regulation of the entire livestock sector and the

National Livestock Development and Promotion Service, for the promotion and development of the subsector.

It is also recommended that the functions of **Kenya Tsetse & Trypanosomiasis Eradication Council** be transferred to the Ministry.

Agricultural Research

The Kenya Agricultural and Livestock Research Organization (KALRO) amalgamated the Kenya Agricultural Research Organization, Tea research foundation, Coffee Research Foundation, Kenya Sugar Research Foundation, Kenya Forestry Research Institute (KEFRI) and Kenya Marine and Fisheries Research Institute (KEMFRI). The last two institutes are remotely related to agriculture and inclined more to environment.

It is recommended that the mandate of **Kenya Agricultural and Livestock Research Organization** be restricted to agricultural research while **Kenya Forestry Research Institute** and **Kenya Marine and Fisheries Research Institutes (KEMFRI)** are reinstated as independent entities.

National Cereals and Produce Board (NCPB)

In 1979 the Government established the **National Cereals and Produce Board (NCPB)** by merging the Maize and Produce Board with the Wheat Board of Kenya with a view to streamlining the management, handling and marketing of all grains. The board was given monopoly powers to purchase, store, market and generally manage cereal grains and other produce. With liberalisation of the grain sector in 1993 NCPB was restructured turning it into a commercial outfit but continued to provide strategic grain reserve function.

The taskforce recommends that NCPB should be restructured to transfer the *Strategic Grain Reserve* mandate to the relevant Ministry and retain NCPB as a commercial entity under GIC.

Environment, Water and Natural Resources

Water Sector

The Water Act 2004 established the structure for the water sector, with eight (8) Water Service Boards established around water basins for development of water resource infrastructure and supply. The Act also established Water Services Trust Fund to support access to water in areas without adequate water services while Water Services Regulatory Board is established for licensing and regulation of water service providers. Water is a national resource owned by the National Government and the ownership function is vested in Water Resources Management Authority (WARMA).

Under the Fourth Schedule of the Constitution of Kenya 2010 water services and sanitation function including related water works is vested in the county level of government, while conservation of water as a natural resource is vested in the national level of government. In this regard therefore **the Water Resources Management Authority (WARMA)** shall be retained with its current functions at the national level while **the Water Services Regulatory Board (WASREB)** should be retained as a regulator for the sector.

Water Service Boards by design operate across county boundaries where they are licensed to provide water services. This function is assigned to county governments under the Fourth schedule. Due to their coverage and indivisibility the Boards cannot be transferred to any one county in the area covered. There is however scope for transfer of the Boards to the counties served as joint authorities under Article 189 (2) of the Constitution that provides for cooperation between the two levels of government and between county governments through joint committees and authorities. It is therefore recommended that in respect of **Water Service Boards** the national government and county governments should hold consultations on the future of Water Services Boards and how they will be manage. The ownership of **Water and Sanitation Companies** should be transferred to County Governments.

National Water Conservation and Pipeline Corporation (NWCPC)

The role of the *National Water Conservation and Pipeline Corporation (NWCPC)* has increasingly diminished with the enactment of the Water Act and establishment of Water Service Boards. There however may be scope to turn the company round for purposes of undertaking works for bulk water works commercially. In this regard the taskforce recommends that the functions of the NWCPC should be transferred to GIC which shall consider whether the NWCPC should be retained or dissolved.

Water Services Trust Fund (WSTF)

Although the *Water Services Trust Fund (WSTF)* was established to support access to water in areas without adequate water supply, the taskforce is of the view that the fund can play a critical role in the financing of the water sector. In this regard it is recommended that the Water Services Trust Fund (WSTF) should be retained.

Environmental Conservation

In 2012 the Government created the Kenya Water Towers Agency to fill a gap in coordination, protection, rehabilitation, conservation and sustainable management of water towers. The taskforce notes that in nearly all cases water catchment are located in forests and therefore protection and conservation of forests is critical to conservation of water catchments. On the other hand Kenya Wildlife Service carries the mandate for wildlife conservation and management. The Nyayo Tea Zones Development Corporation also operates some conservation activities in forest environment. Protection, conservation and management of forests is vested in the Kenya Forest Service. The taskforce also notes that Kenya Wildlife Services is mandated to conserve and protect wildlife and it is not possible to protect wildlife outside of the forest environment. These four agencies operate independently of each other and pursue different strategies yet their mandates are intrinsically intertwined.

For purposes of integration and effectiveness it is recommended that *the Kenya Water Towers Agency; the Kenya Forest Service, the Kenya Wildlife Service* and the conservation function of *Nyayo Tea Zones Development Corporation* should be merged to form one entity that shall be responsible for wildlife, forests and water catchment management and conservation.

The residual commercial function of the Nyayo Tea Zones Development Corporation should be transferred to GIC.

Forestry and Environmental Research

The Kenya Agricultural, and Livestock Research Organization Act 2013 combined research institutes in agriculture, environment and natural resources sectors and dissolved Kenya Forestry Research Institute and Kenya Marine and Fisheries Research Institute. This has implications for the sectors concerned as policy and accountability for forestry, water and environment are not vested in agriculture and expertise in their management and research therefore cannot be found in the Ministry of Agriculture and Fisheries.

In this regard *the Kenya Forestry Research Institute* and *the Kenya Marine and Fisheries Research Institute* should be reinstated for purposes of forestry and environmental research.

Commerce and Tourism

The Tourism Act 2011 created a research Institute for the sector. The taskforce does not find adequate justification for establishment of a fully fledged entity dedicated to tourism research and its retention will therefore not be necessary. It is also noted that Kenya Utalii College offers degree level of education and training in tourism. In view of the foregoing it is recommended that functions of *the Tourism Research Institute* should be transferred to the Kenya Utalii College or undertaken under any of the public universities offering education and training in tourism.

The Taskforce further recommends that the functions of Kenya Tourist Board should be transferred to the *new Kenya Investment Corporation* while the *Tourism Finance Corporation* should be merged into the *Kenya Development Bank (KDB)*.

Devolution and Planning

The Government has a number of entities devoted to activities that play a crucial role in economic planning, regional development and empowerment of youth and women. These include; Constituency Development Fund Board, Kenya National Bureau of Statistics, National Coordination Agency for Population and Development, Kenya School of Government, Kenya Institute for Public Policy Research and Analysis, and South-South Centre. Women Enterprise Fund and Uwezo Fund though unincorporated also operate under the Ministry.

The South-South Centre is noted to be newly created to undertake a role that should be effectively performed under a department within the Ministry in collaboration with the Ministry of Foreign Affairs and International Trade. In this connection it is recommended that the:

- i. *South-South Centre* should be dissolved and the function reverts to the Ministry of Devolution and Planning.
- ii. Youth Enterprise Development Fund, Women Enterprise Fund and UWEZO Fund should be merged with Small and Micro Enterprise Development Authority into Biashara Kenya.

Education, Science and Technology

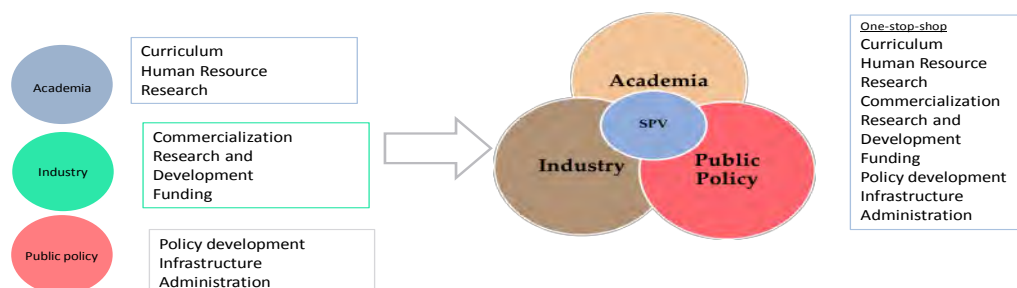
This Ministry includes in its docket all Public Universities, Commission for University Education, Higher Education Loans Board, Centre for Curriculum Development, Kenya National Examination Council, the newly created Kenya Universities and Colleges Central Placement Service, Technical and Vocational Commission for Science and Technology and the Kenya National Commission for UNESCO.

The taskforce notes with concern that the proliferation of Public Universities without corresponding growth in academic staff and other resources is potentially compromising the quality of education. In addition, there is no correlation between the programmes offered at the universities with the overall national development agenda. A notable deficiency lies in the limited focus on academic courses in science, technology, engineering and mathematics programmes, critical to moving Kenya to the middle-income status by 2030. This matter should be handled by the Commission for University Education to ensure expansion of universities is matched with infrastructure and development of academic staff and other support facilities. As the Commission considers matching university education to national development goals the taskforce recommends that all universities should moot an appropriate mechanism of linking their academic programmes to research and developing strategic linkages and synergies with industry similar to the South Korean model shown below:

Synergy between Universities, Research & Industry

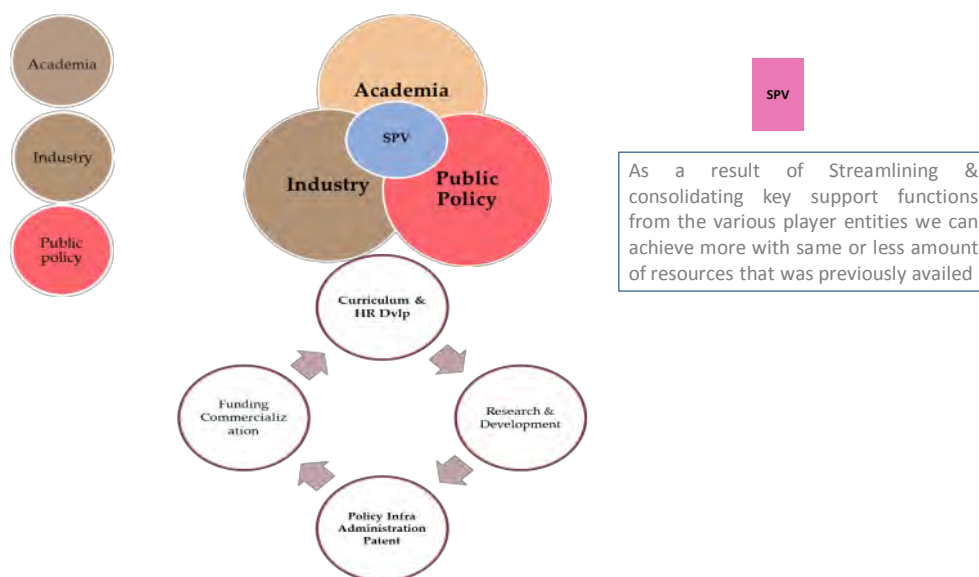


Thro' PPPs S. Korea has successfully linked academia, industry & research institutions & attained global market leadership in innovation and research commercialization.



24

Lessons learnt



25

Tertiary Education and Training

The taskforce noted the dwindling investments in middle-level colleges and institutions that produce artisans and technicians critical in the industrialisation of a developing economy like Kenya. Best practice recommends a ratio of one engineer to ten technicians/artisans. Conversely in Kenya the reverse is obtained whereby it is estimated that for every one technician/artisan there are eleven professional graduates. This situation is aggravated by systematic conversion of national polytechnics and technical institutes into public universities.

In this regard the taskforce recommends that the national polytechnics and technical universities should be compelled to retain middle-level courses (certificates and diploma

programmes). The government should also focus on investment in technical and vocational education and training (TVET) institutions.

National Commission for UNESCO

The taskforce notes that the Kenya National Commission for UNESCO operated as a department of the Ministry of Education from the 1960s to January 2013 when the Kenya National Commission for UNESCO Act was enacted. The Commission is established for purposes of achieving Kenya's international obligations which is best achieved through policy level administration in the Ministry of Education, Science and Technology. The taskforce noted that there is no good reason for retention of the Commission as an independent government entity and recommends that its functions be transferred back to the Ministry.

Nonetheless, it is recommended that the Ministry of Education, Science and Technology should address management issues for purposes of efficiency and to avoid further agitation for breakaways.

Higher Education Loans Management Board

This entity was formed with an objective of financing higher education. With increase of universities and expansion of the mandate of the entity to provide loans to students in all universities and Tertiary Training Education Institutions, it is becoming increasingly apparent that the Government will not be able to provide funds to the Board for onward lending to students. Under the circumstances, the Board has explored ways of raising additional funds to cover its mandate and established that it may be able to attract global funds if it converts to a Development Finance Institution for financing higher education. There is no compelling reason why the Board should not be allowed to pursue the option, provided the interest rate does not go beyond the government stipulated interest rates in respect of education loans.

It is therefore recommended that the Higher Education Loans Board should be transformed into a Development Finance Institution for financing Higher education and that the interest on loans should be retained at current levels and any review should be subjected to Cabinet approval. Further, the leveraging of funding through floating of Education Bonds should direct most of the resources towards science, technology, engineering and mathematics programmes.

Energy and Petroleum

Electricity

Government Owned Entities in this sector are involved in electricity generation, transmission and supply, and regulation of the sector. With respect to electricity, it is noted that Kenya Power and Lighting Company (KPLC) and Kenya Electricity Generation Company (KenGen) are partially privatized and may be candidates for further divestment. The two companies are critical in ensuring Kenya has adequate affordable electricity to drive industrialization and economic development. It is therefore important that any further restructuring of the two entities ensures Kenya's energy requirements in a manner consistent with the national development goals. In this regard it is recommended that ***the Government Investment Corporation should consider increased shareholding in the Kenya Power and Lighting Company and Kenya Electricity Generation Company*** in a manner supportive of the national development goals.

The unbundling of energy sector saw the creation of Rural Electrification Authority in order to accelerate the pace of rural electrification and promote sustainable socio-economic development. The operations of the Authority are financed by Rural Electrification Levy charged on electricity consumers on the national grid.

Rural electrification could be viewed as a component of "national public works" under the Fourth Schedule of the Constitution Part One (1) or as a component of county planning and

development under Part Two (2) of the schedule which allocates electricity and gas reticulation and energy regulation to the county level of government.

Considering that Part 2 of the Schedule is not clear and in view of the mode of financing of rural electrification, it is recommended that the Kenya Rural Electrification Authority (REA) be dissolved and the rural electrification levy be transformed to electricity fund at the national level for allocation to counties based on their rural electrification needs.

Petroleum

In petroleum the Government has two entities: Kenya Pipeline Company; and National Oil Corporation of Kenya. Kenya Pipeline Company is charged with providing the most economical way of transporting and storing of petroleum products. The National Oil Corporation is involved in upstream petroleum activities including exploration of oil and gas, mid-stream development of petroleum infrastructure and in downstream marketing of petroleum products including motor and industrial fuels, lubricants, LPG and related motor vehicle consumables and hardware with an objective of price stabilization.

The taskforce notes that Kenya Pipeline Company is earmarked for privatization. It is also noted that National Oil Corporation has little influence on market prices given its market share in downstream activities and in importation of oil. It is also noted that price stabilization is not realizable without strategic national oil reserves. In this regard it is recommended that:

- i. The Kenya Pipeline Company should be transferred to the GIC to determine intended privatization taking into account it is a monopoly.
- ii. The capacity of National Oil Corporation should be developed to become a strategic player upstream and downstream in the oil and gas sector, in the manner of PETRONAS Malaysia.
- iii. The regulatory functions on oil exploration which are currently vested in NOCK should be transferred to the recommended ***Mining and Oil Exploration Regulatory Service***

Social Security

This sector hosts the National Social Security Fund (NSSF) Board of Trustees, National Council for Persons with Disability, which should largely be left as it is; National Industrial Training Authority; and the newly created National Social Assistance Authority under Social Assistance Act 2013. Local Authorities Provident Fund similarly belongs to this sector.

National Social Security Fund (NSSF) Board of Trustees

There has been an assumption that National Social Security Fund and National Social Security Fund Board of Trustees are one entity but the two are established separately by the National Social Security Fund Act Cap. 258. The Fund is established under Section 3(1) of the Act with a proviso that it shall be managed by a Board of Trustees. The Board is established as a body corporate by Section 4 (1) of the Act as National Social Security Fund Board of Trustees. The Fund comprises members' contribution and is not established as a body corporate while the Board of Trustees is established as a Government agency to manage the fund. In this regard the Board is an Executive Agency.

With the separation of the two entities it becomes clear that investments by National Social Security Fund are not Government investments as the Fund and its Board of Trustees are different entities. It follows therefore that the NSSF investments in the form of shareholding in National Bank of Kenya and East African Portland Cement Company are not Government investments (shares). The two Corporations have in the past been treated as Government Owned entities as a result of combined shareholding of the Government and NSSF. In view of separation of the Fund and its Board of Trustees it is recommended that the National Bank

of Kenya and East African Portland Cement Company should be treated like any other company in which the Government owns minority shares but not as State Corporations.

Reform of the National Social Security Fund

There is an on-going debate on how National Social Security Fund should be structured, including the question whether it should become a default pension scheme. This may not be covered adequately under this report as it requires detailed analysis.

It is however clear that NSSF has attracted unemployed persons who register as members and contribute to the Fund on voluntary basis for purposes of retirement and is therefore moving beyond the mandatory contribution. It is also clear that governance structure of the Board of Trustees needs to be realigned even as the possibility of making it a default national pension scheme for harnessing savings for national development and retirement is explored. As the debate continues, we are clear that the Managing Trustee should be an appointee of the Board of Trustees and that NSSF should operate under Retirement Benefits Act. In this regard it is recommended that the interim the NSSF Act should be amended to provide for appointment of the Managing Trustees by the Board of Trustees and to provide for a professional Board of Trustees. In addition NSSF should comply with Retirement Benefits Act requirement within twelve months.

Local Authorities Provident Fund

This entity was established as a provident fund for employees of local authorities, which stand abolished under the Constitution. Considering that the Fund was ideally intended as a pension fund for employees of the defunct Local Authorities, it is important that the members do not lose benefits under the new dispensation. In this regard it is recommended that the Local Authorities Provident Fund be transformed into a pension scheme for County Government employees operating under the Retirement Benefits Authority.

National Industrial Training Authority

The National Industrial Training Authority is the administrator for the Industrial Training Levy Fund. It also runs training schemes for: Management and Supervisory training; Apprenticeship Training, Craft, Technician Skill-Upgrading, Indentured learners, National Industrial Attachment Programme, Curriculum development, Trade testing and certification, Inspection of training providers; Administration of Industrial Training Levy Fund; Administration of the four Industrial Training Centres and Kenya Textile Training Institute. The other functions include: processing applications for local management/ supervisory and overseas courses; registration of new trainers; Reimbursement of training expenses.

There is a case for retention of the Authority in the current form but its mandate should be enhanced to include enforcement of industry specific skills upgrading for employability and productivity improvement.

National Social Security Assistance Authority

This body is not operational and therefore exists only on paper. There is an observation that to deliver its mandate this entity would require presence at the grass roots and the alternative would be to work through the National Administration structure. There would be no compelling need to have such an entity side by side with the National Administration which has capacity to identify persons in need of social security support. In this regard it is recommended that the National Social Security Assistance Authority be dissolved and the function transferred to the Ministry of Devolution and Planning for implementation as a special programme.

National Council for Children Services

The National Council for Children Services is established under Section 30 of Children's Act 2001 to exercise supervision and control over the planning, financing and coordination of

child rights and welfare activities and to advise the Government on related matters. The management structure however indicates that the Council was never intended to operate at arms' length from the ministry as the Act does not provide for appointment of a Chief Executive Officer (CEO). In the place of a CEO the Act provides that "the Minister shall appoint a Director of Children's Services and may also appoint one or more Deputy Directors of Children's Services and such number of senior children's officers and other officers as may be necessary to assist the Director in carrying out the purposes" of the Act. It is therefore clear that the Council was not intended to be an agency outside the ministry.

In this regard, it is recommended that the National Council for Children Services should revert to the status of a statutory board and should therefore not be treated as an Executive Agency.

Health Sector

The taskforce notes that the two national referral hospitals are Kenyatta National Hospital and Moi Teaching and Referral Hospitals. In addition to providing medical services these institutions are also used at teaching hospitals. There has been a consistent concern on quality of medical care services provided by the hospitals where the public expects them to be centres of excellence. The taskforce recommends that the government invest to enhance the institutional (infrastructure, equipment and drugs) and human resource capacity (ratio of doctors, nurses, other medical personnel and patients).

National Hospital Insurance Fund

The National Hospital Insurance Fund (NHIF) is established by Section 3 (1) of the National Hospital Insurance Fund Act with a proviso that it shall be managed by a Board of Management. As in the case of NSSF the Fund comprises members' contributions and is not established as a body corporate. The Board is established as National Hospital Insurance Fund Board of Management separately as a body corporate by Section 4 (1) of the Act. The Board is a Government agency appointed to manage the Fund.

The purpose of the Fund is to provide medical insurance cover to all its members and their declared dependants covering the expenses incurred in respect of drugs, laboratory tests and diagnostic services, surgical, dental or medical procedures or equipment; physiotherapy care and doctors' fees, food and boarding costs, subject to limits, regulations and conditions decided by the Board in consultation with the Cabinet Secretary for Health.

There is an on-going debate on how the Fund could be reformed to finance universal health, but there is a concern on the business model adopted by the Board as it does not operate like other medical insurance schemes. It has also been noted that although contributions are mandatory for employed persons, the Fund also covers persons who join and contribute on voluntary basis.

It is noted that health is a human right under the Constitution of Kenya 2010 and therefore the fund should cover all Kenyans. Further, the NHIF has not adequately addressed the issue of quality as it concentrates on public hospitals where risks have not been properly managed and therefore even members tend to gravitate towards private hospitals. As the debate on universal coverage is progressed there is a need to ensure that private sector medical insurance providers are not crowded out. There is also a need for the Ministry of Health to accord the Board operational autonomy and ensure that it operates the Fund like any other medical scheme. In this regard it is recommended that:

- i. The National Hospital Insurance Fund should be allowed to operate like any other medical insurance service provider for its members and should be restructured to fully comply with the Insurance Act.
- ii. The Fund should be regulated by Insurance Regulatory Authority.

The taskforce notes that the health sector remains largely unregulated. It is therefore recommended that the Government should establish a regulator for the sector, perhaps dubbed ***“Health Services Regulatory Authority”***.

Transport and Infrastructure

In infrastructure responsibility for rural and urban roads has, under the Fourth Schedule of the Constitution, shifted to County Governments. In this regard, Kenya Urban Roads Authority and Kenya Rural Roads Authority would no longer be relevant at the national level. In this connection ***it is recommended that the future of the Kenya Rural Roads Authority and Kenya Urban Roads Authority be subject to discussions between the national government and county governments.***

In transport the government has established three regulators: Kenya Civil Aviation Authority, Kenya Maritime Authority and the National Transport and Safety Authority. It is noted that rail transport is not well regulated and there may not be a compelling need to establish a dedicated regulator. In this regard ***it is recommended that the mandate of the National Transport and Safety Authority be enhanced to include economic and safety regulation of rail transport and renamed the National Land Transport and Safety Authority.***

Housing

This sector has only three government owned entities: National Construction Authority and the National Housing Corporation and its subsidiary going by the name ***“Research Development Unit Company Ltd”***. The subsidiary is not profitable and its future should be determined by the National Housing Corporation.

The National Construction Authority on its part is mandated to oversee the construction industry and coordinate its development. The Authority has however not fully taken off due to problems related to recruitment and employment, a function vested in the Board. ***It is recommended that the Ministry of Lands and Housing should move with speed to ensure the Authority is fully operational and adequately facilitated to deliver its mandate.***

Film Industry

This sector has a number of Government Owned Entities including Konza Technopolis, Kenya Broadcasting Corporation, Information, Communication and Technology Authority, Kenya Year Book Editorial Board, Postal Corporation of Kenya, Kenya Institute of Mass Communications, Communications Commission of Kenya, Kenya Film Classification Board and Kenya Film Commission. It is recommended that the Kenya Film Commission be restructured with an objective of transferring the regulatory function to Kenya Film Classification Board to become the regulator for the film industry and be renamed **Kenya Film Regulatory Service**. With the transfer of the regulatory function Kenya Film Commission should be renamed **Kenya Film Development Service**.

Information Communication and Technology

Multimedia University of Kenya has on different occasions in the past been assigned to the ministry responsible for information communication and technology when in fact it should be under the ministry responsible for university education. The University should be allowed to operate under the appropriate ministry like any other public university.

Kenya Broadcasting Corporation

The taskforce notes that the Kenya Broadcasting Corporation should be operating on commercial principles but has made huge losses year on year, and that owes the Government huge amounts to the tune of Kshs. 28 Billion in terms of crystallized guaranteed loans. While it is important to retain the Corporation as a Public Broadcaster there is a need to emphasize good governance so as to turn the corporation into a profitable venture.

Kenya Yearbook Editorial Board

Kenya Yearbook Editorial Board chronicles government achievement into a book published on annual basis as part of Kenya's heritage. The function relates closely with functions of the National Museums of Kenya which is mandated with conservation of culture and national heritage. There is no compelling reason for retention of this entity as its function can be undertaken by National Museums of Kenya. It is recommended that the functions of the Kenya Yearbook Editorial Board be transferred to the National Museums of Kenya.

Immigration, Registration of Births, Persons and Deaths

The Kenya Citizens and Foreign Nationals Management Service Act No. 31 of 2011 transformed the former government departments responsible for immigration and registration of births, persons and deaths into Kenya Citizens and Foreign Nationals Management Service currently domiciled in the Ministry of Interior and Coordination of National Government. This agency has not been operationalised due to concerns that the Civil Service should handle its functions. It is however evident that greater efficiency may be realized as was noted in the case of separation of KRA from mainstream civil service. It is recommended that:

- i. The Kenya Citizens and Foreign Nationals Management Service should be operationalized as an Executive Agency and that its services should not be commercialized.
- ii. The customs department of KRA should be hived off and moved to the current Kenya Citizens and Foreign Nationals Management Service.

Copyright Law and Law Reform

In copyright protection and enforcement the government has established Kenya Industrial Property Institute, Kenya Copyright Board and Anti-Counterweight Agency. These institutions sit in each others' Board of Directors. Best practice has shown that the functions undertaken by the three agencies complement each other and are domiciled in one institution in many countries. It is therefore recommended that the Kenya Copyright Board (KECOBO), Kenya Industrial Property Institute (KIPI) and the Anti-Counterfeit Agency (ACA) be merged into a new State Agency to be known as the *Kenya Intellectual Property Office (KIPO)*.

Sports and Culture

Kenya National Library Service falls under sports and culture sector. Under the Fourth Schedule of the Constitution Libraries are assigned to the county level of government but there is a need to establish a national depository of literary works and other publications.

It is recommended that the National Government and County Governments should hold consultations to determine the future of Kenya National Library Service.

Defence

The Kenya Ordnance Factories Corporation as currently established is national security establishment. This body should continue operating in the current manner without undue commercialization.

Mining and Oil Exploration

The mining industry has remained largely unregulated with the responsible ministry doing policy, implementation and regulation. There is a need to reform this sector for purposes of regulation and development. In this regard it is recommended that the Government establishes a regulatory body for the mining sector, called *the Mining and Oil Exploration Regulatory Service (MOERS)*.

Others

Regional Development Authorities (RDAs)

There are six regional development authorities established along river basins. The authorities are established with a mandate to plan development of their regions. This function has however been assigned to County governments by the Constitution under Schedule Four. The taskforce recommends that National and County Governments should hold consultations to determine the future of Regional Development Authorities (RDAs) as prospective joint authorities between County Governments.

Special Purpose Implementing Agencies

The taskforce notes that the Government has established Special Purpose Implementing Agencies that include LAPSET Corridor Development Authority, KONZA Technopolis development Authority and the Special Economic Zones Authority (SEZA). The taskforce recommends that these agencies should be retained with the possibility of review upon completion of the projects.

Law Reform

During the life of the taskforce it was noted that a number of laws that are no longer applicable do exist. There are also a number of laws enacted recently creating Government Entities that duplicate functions of government ministries. The Taskforce recommends that all entities created by obsolete laws be dissolved. Similarly, entities duplicating functions of government ministries should be dissolved.

Box 8.1: Special Economic Zones in Kenya

Kenya's economic blueprint Vision 2030 identifies *Manufacturing* as one of six priority sectors that will drive economic growth with the vision of creating a “*robust, diversified, and competitive manufacturing sector*.” The sector aims to achieve 10% annual growth and grow its contribution to GDP by at least 10 percentage points annually through implementing three strategic policy thrusts of (i) *Local Production*; (ii) *Regional Market Expansion*; and (iii) *Global Market Niche*.

The objective of establishing Special Economic Zones (SEZs) in Kenya is based on the Cabinet decision to establish Special Economic Zones, and to convert Export Processing Zones (EPZs) to SEZs. The Jubilee Manifesto adopted the goal of “*Sparking an Industrial Revolution*” and creation of a strong manufacturing base to propel the country towards becoming Africa's industrial hub” and making Kenya the “*continent's manufacturing and technology hub, the preferred gateway to Africa for foreign (direct) investors, and home to a thriving army of local entrepreneurs*”.

The Manufacturing Sector's overarching policy objective is the creation of 1 million new jobs in the manufacturing sector; *attracting Foreign Direct Investment (FDI) and Technology Transfers; Increasing and diversifying manufacturing exports, trade and foreign exchange earnings* away from traditional/historical products and markets; improving infrastructure for industry and enterprises; *developing technological and innovation platforms*; and *achieving sustained economic growth*

Special Economic Zones as an industrial policy measure offer Kenya *the potential to facilitate rapid industrialization*, starting in controlled industrial enclaves which can later be scaled up and extended to the rest of the country. SEZs typically offer manufacturing and industrial firms targeted fiscal, financial, and regulatory and trade incentives; coupled with world-class infrastructure, a dedicated investment promotion agency offering expedited approvals; and aftercare services to investors. Kenya can also use SEZs to address constraints and challenges facing the manufacturing sector, including High input costs leading to high costs of production, Low capital productivity and unfavourable or adverse business and investment environment.

Best Practice in Implementation of Special Economic Zones includes Attractive Investment and Incentives Packages; Fiscal, Regulatory and Non-regulatory Incentives; well-developed Physical Infrastructure; preferential Market Access. SEZs also implement the Cluster Development model.

Restructuring of the Boards and Top Management in Government Owned Entities

Policy Issue and Challenges

Out of 98 boards of state corporations sampled, the average Board size was approximately eight persons. However, there are large disparities. In addition, as illustrated in Table 8.1, women comprise only 14.3%, and 27.8% of the Board Chairs and Board Members respectively. The youth comprise a very small portion of the Boards, standing at 1.2%. It is clear that there is considerable scope for expanding the participation of youth and women the governance of Government Owned Entities.

Table 8.1: An Analysis of Board Composition in Government Owned Entities

Number of GOEs Sampled	98		
Male Chairpersons	84		
Female Chairpersons	14	14.3	% Share of Board Chairs
Male Board Members	440		
Male National Treasury and Line Ministry Representatives	91		
Female Board Members	189		
Female National Treasury and Line Ministry Representatives	15		
Youth in Boards	9	1.2	% of Youth in Boards
Total Number of Male Board Members	531		
Total Number of Female Board Members	204	27.8	% of Females in Boards
Average Board Size	7.5		

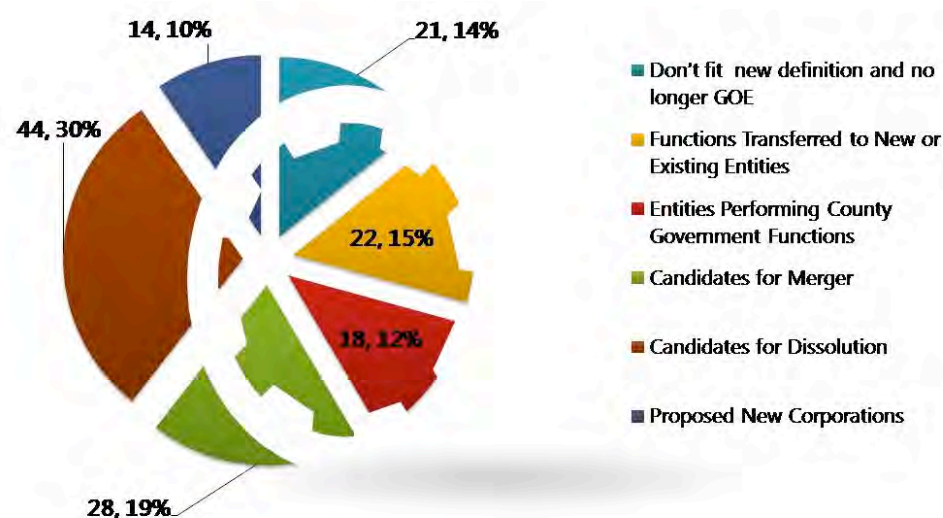
Recommendations

It is recommended that in future appointments to Boards, priority be given to women and youth, without compromising the need for skills to bring these in compliance with the constitutional requirements.

Updated Status of Government Owned Entities

Arising from the re-organization above, only 187 Government Owned entities have been retained as shown in Appendix 5. The reorganisation involved redefining GOEs, dropping those that did not fit into the new definition, merging entities because of reviewing of mandates and establishing of new entities to facilitate more cost effective focus on the national development agenda.

Chart 8.2: Bird's Eye View of the Reorganization of Government Owned Entities



At the time of completion of this report and based on the reorganisation of GOES, the total number of GOEs in the portfolio of Government was 187, arrived at as shown in Table 8.2.

Table 8.2: The GOE Portfolio as of 9 October 2013

#	OVERALL DECISION ON GOES		TOTALS		
	Direction on various GOE categories	Remarks	Number Affected	Overall Effect on the Total Number (+ / -)	Resultant No. of GOEs
1.	Number of GOEs that currently exists in the Country	This number is informed by the Government Owned Enterprises as presently defined in the State Corporations Act, CAP 446			262
2.	Number of GOEs dropped from the original list after new definitions	The proposed definition of GOEs and reclassification as either State Corporations or State Agencies isolates some entities, which are hither to referred as GOEs.	21	Reduction	241
3.	No. of GOEs earmarked for transfer	Entities whose functions are recommended to be transferred back to the respective mainstream Ministries	22	Reduction	219
4.	No. of Entities whose functions have been devolved	Entities perform functions that stand dissolved in line with Schedule Four of the Kenya Constitution 2010 and as such, do not qualify as GOEs. Further Consultation on handling modalities between the National and County Governments is advised.	18	Reduction	201
5.	No. of GOEs merged	Entities that are brought together as a result of proposed merging of different entities with similar/overlapping functions	28	Reduction	173
6.	No. of GOEs newly created	These are institutions proposed to be created due to; gaps that exists in different sectors and proposed mergers of institutions	14	Addition	187
TOTAL NUMBER OF PROPOSED ENTITIES AFTER REORGANIZATION					187

PART 3: ESTABLISHING RESPONSIVE AND SUSTAINABLE SOVEREIGN WEALTH FUNDS

CHAPTER NINE

INSTITUTIONAL STRUCTURE AND REGULATORY FRAMEWORK FOR A SOVEREIGN WEALTH FUND

Background

What is a Sovereign Wealth Fund?

A Sovereign Wealth Fund (SWF) is a state owned investment fund or entity established from balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, government transfer payments, fiscal surpluses, and/or receipts of commodity exports. This definition exclude inter alia, foreign currency reserve assets held by monetary authorities for the traditional balance of payments or monetary policy purposes, state owned enterprises in the traditional sense, government employee pension funds(funded by employee/employer contributions),or assets managed for benefits of individuals.

Why Sovereign Wealth Funds

The common objectives of establishing a SWF are; (i) Protect and stabilize the budget and economy from excess volatility in revenues/exports;(ii) Diversify from non-renewable commodity exports;(iii) Earn greater returns than on foreign exchange reserves;(iv) Assist monetary authorities dissipate unwanted liquidity;(v) Increase savings for future generations; (vi) Fund social and economic development;(vii) Enhance sustainable long term capital growth and (viii) Promote strategic and political objectives.

Types of Sovereign Wealth Funds

Based on the source of funding, SWFs can be divided into commodity and non-commodity based funds. Commodity-based funds are established through the receipts from commodity exports owned or taxed by the government. On the other hand, non-commodity-based funds are usually created through transfers of assets from official foreign exchange reserves. In certain cases, these funds are based on fiscal surpluses, proceeds from privatization and direct transfers from the state budgetary resources.

Based on their purposes, SWFs can be broadly categorized into:

Savings funds

These are intended as permanent funds and generally associated with non-renewable natural resources. They create a store of wealth for future generations so that they can benefit from the resources after their depletion. They build on economic theory which implies that part of non-renewable resources should be saved to smooth the country's inter-temporal consumption, in ways similar to individuals who save both for their retirement and to leave an inheritance to their children.

Stabilization fund

This fund has a mechanism designed to reduce the impact of volatile fiscal revenues and/or foreign exchange receipts, linked to the pro-cyclical pattern of export prices or volumes. Stabilization funds often take the form of contingent funds, which accumulate resources when government revenues or the price of exports is high (above some threshold) and drawn upon when the commodity prices are lower or there is a shortage of reserves.

Financing fund

In this fund, operational rules are explicitly designed so it effectively absorbs a budget surplus or funds an overall budget deficit. An example is the Norwegian Fund, where the budget has to transfer to the fund revenues if the budget is in overall surplus; if the budget is in deficit, the latter is financed by the fund.

Development fund

This fund allocates resources for funding priority socio-economic projects, such as infrastructure. If SWFs invest abroad, such development funds could, for example, invest in infrastructure and other projects in neighbouring countries. This could be done bilaterally or through regional and sub-regional development banks.

Emerging Sovereign Wealth Funds in Developing Countries: The State of the Art

Background

Owing to their dynamic growth as an investor class, SWFs have drawn the spotlight of public scrutiny since 2006. The very idea that a state could manage or mandate a dedicated agency to manage the wealth of a nation has become an increasingly appealing concept in making economic policy. Older and more established sovereign wealth funds became reference points for emerging funds. This section discusses issues around the emerging SWFs.

SWFs set up in anticipation of excess revenue

Many governments have set up sovereign wealth funds in anticipation of excess revenue. Israel's thrust to set up a sovereign wealth fund demonstrates how highly anticipated natural-resource revenue can influence the creation of a sovereign wealth fund. It is estimated that Levantine Basin has undiscovered energy resources amounting to about 122 trillion cubic feet of recoverable natural gas and 1.7 billion barrels of oil. The reserves have the potential to transform countries of the Eastern Mediterranean including Israel from energy importers into natural-gas suppliers in international energy markets. The Israeli government chose to conceive the future sovereign wealth fund in a broader public risk management framework. Consistent with the country's political and economic challenges, the sovereign wealth fund has the latitude to contribute to Israel's overall national security when required to do so.

Lebanon like Israel is also among the prospective beneficiaries of the gas reserves in the Levantine Basin. Though political, regulatory and operational hurdles need to be cleared before the country can tap into its share of the gas reserves, the Lebanese government spelled out its intention of creating a sovereign wealth fund in its Offshore Petroleum Resources Law of 2011.

Though Panama is not endowed with mineral resources it hopes to prosper from its geographical location. In 2007 the government began to expand the Panama Canal with an investment of US\$5.25 billion in an effort to accommodate larger cargo ships. The expansion is scheduled to be completed by 2014. The Panama Canal Authority estimates that cargo volume transiting the canal will grow at an average of 3 percent per year, and result in a regular revenue inflow of about \$1.5 billion per year. In June 2012 lawmakers approved the creation of the National Savings Fund to safeguard the country against future negative shocks. The fund will receive its initial assets from the government's Development Fund, a trust fund created in 1995. Subsequently, the fund would receive revenue received by Panama's National Treasury from distributions from the Panama Canal Authority in excess of the equivalent of 3.5 percent of the country's nominal GDP.

Papua New Guinea, one of the world's poorest countries, will start delivering natural gas to Japan, China and other markets in East Asia by 2014. Revenue amounting to US\$30 billion is expected over three decades and will double the country's GDP. Following such substantial windfall revenue, Parliament passed a Sovereign Wealth Fund law in February 2010.

In Africa, Ghana in anticipation of receiving windfall profits from oil and mindful of the need to mitigate the impact of those future revenues on the Ghanaian economy the government set up the Ghana Petroleum Holding Fund in March 2011 through the Petroleum Revenue Management Act of 2011. In Sierra Leone, the Minister of Finance and Economic Development suggested creating a sovereign wealth fund in anticipation of “windfall mining revenues” in May 2012.

Fundamental drivers spurring new SWFs

Commodity prices are still the most powerful driver. The sustained dynamic of the commodities super cycle has helped reinforce the idea that diversifying financial reserves through foreign investment can help safeguard the interests of a country’s citizens and preserve wealth for future generations.

Growing appreciation of capital market risk and the importance of risk management in national policymaking is the second driver spurring new SWFs. Governments have gained a new understanding of sovereign risk exposure in a world fraught with macroeconomic uncertainty, and that awareness has spurred them to accumulate financial assets. Policymakers are responding to the proliferation of broader geopolitical, environmental and demographic risks. A sovereign wealth fund can provide a meaningful buffer against known, unknown and, at the margins, unknowable economic risks. The importance of preparing for a tail-risk event resonates increasingly among more-farsighted policymakers. In the monetary policy arena, governments have often sought to create fiscal buffers in the form of official foreign exchange reserves. Some are now seeking to invest a portion of those reserves through sovereign wealth funds, with the goal of diversifying holdings and achieving higher returns while satisfying different risk management objectives without unduly compromising liquidity requirements.

The third driver relates to the growing self-awareness of nation-states. The emergence of sovereign wealth funds as influential players in the international financial system has had a huge impact on national institution building. The very concept of a sovereign wealth fund has turned into a significant symbol of the self-determination of the state. Sovereign wealth funds contribute to the creation of national identity and have been seen as valuable instruments for preserving a nation’s autonomy in global affairs. Governments have also set up funds to improve public institutional capacity and build more-effective governance arrangements. As a direct consequence, state agencies have become more competent and confident either in assuming the role of a sophisticated wealth manager or in supervising outsourced wealth management. Some sovereign wealth funds have even served as useful tools for shaping national foreign policies.

Political structure can be a challenge in setting up a SWF

Countries with a federal political structure have occasionally seen fierce arguments open up between federal and state bodies over control of sovereign wealth assets. For example, in 2011, after much political horse trading, the government pushed through the Nigeria Sovereign Investment Authority (NSIA) Act, which amended the constitution and established the legal basis for a new Nigerian sovereign wealth fund, along with strong governance and accountability frameworks.-to avoid legal challenges. The state governors however challenged the constitutionality of the NSIA but the court ruled in favour of the government.

Sub national SWFs inspired by national SWFs

Australia’s Future Fund with US\$84.5 billion in assets and an international reputation for good governance inspired the government of Western Australia to create a sovereign wealth fund by conserving some of the profits from the state’s substantial deposits of mineral resources mainly, iron ore. After an intense debate among policymakers, federal and state authorities, and industry participants, the Western Australia Future Fund was introduced in May in the state’s 2012–13 budgets. The purpose of the fund is to ensure that future generations benefit from the state’s finite resources and help future governments meet

emerging infrastructure requirements. Between 2012–13 and 2015–16, the government plans to transfer more than US\$1.04 billion in seed capital to the fund. The government estimates that the Future Fund will have a balance of about US\$4.8 billion within 20 years.

Global Lessons on Effective Sovereign Wealth Funds

- a. Sovereign Wealth Funds (SWFs) are either established by an Act of parliament or Company's Act. Other SWFs are either government agencies managed directly under the government. Other SWFs have been established by a decree.
- b. While some countries have either established a Commodity SWF or Non-commodity SWF, some countries have both types of SWFs.
- c. Initial funding of SWFs varies. Nevertheless, once SWFs are set up, they grow by returns they earn and also by subsequent addition of surpluses to the funds. SWFs maximize long term return on assets.
- d. SWFs types vary by their main objective. Whereas some countries have stabilization and sterilization funds, others have emphasized saving and development while others are preventive and strategic. Funds may have a mix of objectives as well. The established SWF needs to have adequate funds to meet its objective.
- e. Depending on the investment objective e.g. fund for future generation, SWFs can have very long investment time horizons, and hence can tolerate higher risk and expect to earn higher return than traditional official reserves that are mainly invested for liquidity and reserve management in low yielding sovereign debt securities (e.g. Dollar denominated USA Treasuries).
- f. Sovereign Wealth Funds (SWFs) tend to be run autonomously from traditional reserve management by Central Banks and/or Finance Ministries. Independence is a critical part of their governance structures. Hence most SWF assets are additional to official foreign exchange reserve holdings.
- g. Political and governance structures can lead to a non-broad consensus on economic policy. This hazard makes the creation of new sovereign wealth funds arguably more difficult because these funds have to be negotiated in light of vested political interests. As a result, the process of setting up a sovereign wealth fund can be difficult, protracted and surrounded by a great deal of friction as governments seek to placate vested interests and win over popular opinion.
- h. Sovereign wealth funds can be established in anticipation of excess revenue. Such SWFs are likely to have low initial funding and may not have immediate lumps of cash to invest.
- i. International best practices require SWFs to follow appropriate transparency, accountability and governance frameworks including adherence to the generally accepted principles for Sovereign Wealth Funds (the Santiago Principles). These commit SWFs to follow certain principles:
 - Accumulation Rule: What portion of the revenue can be spent or saved;
 - Withdrawal Rule: When the Government can withdraw from the fund;
 - Investment Rule: Where revenues can be invested e.g. in foreign or domestic assets
- j. The success of a national SWFs can inspire of formation of sub national SWFs.

The Appendices 7 and 8 set out a comparison of the key Sovereign Wealth funds and a brief on Santiago principles.

The Policy Imperative for Sovereign Wealth Funds in Kenya

The Presidential Taskforce on Parastatal Sector Reforms has been mandated to make recommendations for appropriate institutional arrangements for a Sovereign Wealth Fund. The expected output is:

- Make recommendation on the institutional structure for the establishment of an appropriate sovereign wealth fund;
- Make recommendations for the regulatory framework.

Kenya's economic development blueprint, Vision 2030 aims to create "a globally competitive and prosperous country with a high quality of life". It seeks to transform the country into a newly industrializing, "middle-income country providing a high quality life to all its citizens by the year 2030" through economic development and adopts the key objective of achieving and sustaining annual economic growth of 10% to 2030. The Vision is grounded on the economic, social and political pillars; identifying under the economic pillar six priority sectors, including financial services that will drive economic growth.

The objective of the financial sector is the creation of "a vibrant and globally competitive financial sector that drives high levels of savings to finance Kenya's investment needs" and the creation of an international financial centre. Kenya's economic and national interests thus include developing a competitive and efficient financial sector and a world-class financial centre which serves as the regional financial hub.

Vision 2030 identifies several enabling foundations that are necessary to support the three Pillars. These include enhancing equity and wealth creation opportunities for the poor, and assigning high priority to investments in infrastructure. Vision 2030 thus acknowledges intergenerational equity as a valid policy to guide economic and social programs (in addition to calling special attention to investments in the arid and semi-arid districts, local communities with high incidences of poverty to benefit youth, women, and vulnerable groups.)

The Jubilee Manifesto builds upon the Vision 2030 enabling foundation of enhancing equity by adopting as policy the goal of establishing "an in-country Sovereign Wealth Fund based upon international best practices to secure an income from the resources of today for future generations of Kenyans". The investment objective of an "in-country" SWF is to use the resources to invest as outlined in Vision 2030 in investments in infrastructure, amongst others which will lead Kenya developing to a middle income economy. The purpose of establishing that "fund for future generations" would be to secure an income from the resources of today for future generations of Kenyans to achieve the intergenerational equity envisaged under Vision 2030.

The Jubilee Manifesto envisages also the creation of an "Oil & Gas Revenue Fund" and allocation of designated levels of revenues to local communities where (natural) resources are located towards development of local renewable energy schemes and funding restoration and rehabilitation of excavated areas.

On-going policy developments specifically in the Draft Mining Bill 2013 (in Parliament) also call for the establishment of a Sovereign Wealth Fund.

The creation of a Sovereign Wealth Fund (SWF) by Kenya is thus a policy choice that is consistent with Vision 2030 objectives of achieving greater equity, especially intergenerational equity, and prudent (and proactive) management and investment of future natural resources revenues and reserves.

Management of the proposed Sovereign Wealth Fund (SWF) guided by international best practices would also fit guidelines under Vision 2030 for "transparent, accountable, ethical and results-oriented government institutions".

Policy Issues and Challenges

Objectives and Purpose of Kenya's Sovereign Wealth Fund

The primary goal for establishing Kenya's Sovereign Wealth Fund is to achieve the policy objective of securing an income from current resources for future generations.

The on-going policy development in the oil, mining and minerals sector envisages creation of an Oil & Gas Revenue Fund to support local communities, roll out local renewable energy schemes; fund restoration and rehabilitation of excavated areas; support Government savings from mineral revenues to ensure sustainable and stable future incomes; ease economic stress through Stabilization; strengthen the nation's long term financial position; and finance expenditure on public pensions.

Additional objectives for Kenya's Sovereign Wealth Fund appear to include supporting the fiscal budget through transfers to National Government budgets (with approval of Parliament) from Sovereign Wealth Fund investments (domestic and international).

These objectives are expected to change over time with the onset of sustained exploitation and production of natural resources from recent discoveries in Oil and Gas, Coal, Titanium, Soda Ash, Rare Earth Elements (REE) and other natural resources endowments.

Structure & Management of Kenya's Sovereign Wealth Fund

The Governance and management of Sovereign Wealth Funds is of critical importance. The key considerations and decisions relate to Investment Policy, the Investment Process, Managing Investments and adhering to standard transparency, accountability and governance requirements applicable to SWFs particularly the generally accepted Santiago Principles and OECD/IMF Guidelines.

Other matters to be determined by the Governance and management framework include determining (or limiting) the nature and extent of Government control and influence. International best practices can provide guidelines for independence that confers Financial Autonomy but with clear reporting lines and Financial Accountability to Parliament, Boards, Advisory Councils and Cabinet. Audit requirements typically include the Office of the Auditor General (OAG), the Cabinet and Parliament.

The Investment Process is expected to be outside typical Procurement requirements. Many SWF outsource investment to Fund managers under clear guidelines set by oversight and governance structures.

Investment Policy would include guidelines and rules that SWF follows in its investments and would be consistent with the broader Government investment policy.

Funding, Withdrawals and Spending Rules

SWF Standards for Funding withdrawals and Spending Rules are usually set up in the founding Act, Mandate or Charter Instrument used to establish SWF/GIC.

Options for Establishing Kenya's Sovereign Wealth Funds

The key policy options and considerations for the NIFC are set out below:

Type(s) of Sovereign Wealth Fund to establish

This entails a choice or decision to create: (a) one or more Commodity Sovereign Wealth Funds; or (b) One or more Non-Commodity Sovereign Wealth Funds; (c) a mix of one or more of the two types. As indicated earlier the policy decision to establish an in country Sovereign Wealth Fund has been made (under the Jubilee Manifesto).

The Legal, regulatory and Institutional framework to establish

The key policy choices are mainly the following: (a) establish under an Act of parliament; or (b) set up as SWF as a limited liability company under the Company Act. The establishment under legislation by an Act of Parliament is recommended.

Governance, management, and investment policy

The founding legislation would specify key policy guidelines on Governance, management, and investments, including objective(s) and purpose(s); investment policy, process and rules; guidelines for Managing Investments; Funding, Withdrawals and Spending Rules; oversight, management and staffing; and financial autonomy, accountability and reporting.

Source of Funding Sovereign Wealth Fund

The Revenue Options under consideration include:

1. Initial start-up capital of Kshs. 10 billion
2. Capital increases from Privatization proceeds; “Surplus” Foreign Exchange Reserves exceeding threshold(s) determined by policy (currently 4 months Import cover required to be held as reserves); and Dividends from public enterprises
3. Leverage (Debt: SWF can and do borrow)
4. Oil, Gas and Minerals Revenue Fund

Commodity and export receipts are not expected to provide an immediate source of funding the SWF. Official foreign exchange Reserves (currently USD 4.2billion) are expected to remain close to stipulated levels of four months import cover.

The policy developments in the Mining and Minerals Sector suggest paying into Kenya’s Sovereign Wealth Fund(s) at least 25per cent of all resource revenues and to pay any other contributions as may be appropriated to it by Parliament.

Kenya currently runs budget deficits at levels of 3% GDP, and thus Budget surpluses are not a likely funding source for the SWF. The option of appropriations by Parliament remains, and would be equivalent to funding the SWF from Net Foreign Financing under the Capital Account.

The reality is that there are no provable “surplus” revenue streams at the moment to pay into the SWF though they are plenty on horizon (3-7 years: Oil, Gas, Titanium, Rare Earths, Magadi Soda).

Financial Implications

The financial implications flow directly from the policy choices selected. Broadly they comprise three components:

- a. budgetary costs for preparatory work on establishment of the Sovereign Wealth Fund, including costs of setting up the legal, regulatory and institutional frameworks;
- b. capital and investment costs for setting up and funding the SWF;
- c. budgetary costs for SWF annual operating costs, being the shortfall, if any, of SWF expenditure and costs compared to its earnings and investments net of fund management fees and charges (these costs would be borne until the SWF gains financial independence when earnings from investments exceed annual operating costs)

Recommendations

In anticipation of excess revenue from natural resources, establish up one or more Sovereign Wealth Funds (SWF) through legislation by having a **Sovereign Wealth Fund**, based on learning’s from the experiences of Botswana, Ghana and Nigeria, the selected proposals of the Act are outlined in Table 9.1.

Table 9.1: Proposals of the Sovereign Investment Authority Act

Country	Botswana	Ghana	Nigeria	Rwanda	Kenya(Proposals)
Fund	Pula	Petroleum Holding Fund	Nigeria Sovereign Investment Authority	Agaciro Development Fund	Kenya Sovereign Wealth Fund
Act	Bank of Botswana (BoB) Act (Sec 35)	Petroleum Revenue Management Act, 2011(Act 815)	Nigeria Sovereign Investment Authority Act,2011	(National Dialogue)	Sovereign Investment Authority Act
Purpose of fund	Separate long-term investment fund	Receive and disburse petroleum revenue supports national Budget Ghana Stabilization Fund Ghana Heritage Fund Within 1 year after petroleum reserves are depleted, the moneys held in both the Ghana Stabilization Fund and Ghana Heritage Fund shall be consolidated into a single Fund to be-known as the Ghana Petroleum Wealth Fund after which the Ghana Stabilization Fund and the Ghana Heritage Fund shall cease to exist.	Receive, manage and invest Future Generations Fund Infrastructure Fund Stabilization Fund (20% minimum allocation to each)	Solidarity fund for Rwandans to fast-track and own their development	Support local communities Roll out local renewable energy schemes; Fund restoration and rehabilitation of excavated areas Support Government savings from mineral revenues to ensure sustainable and stable future incomes Ease economic stress through Stabilization Strengthen the nation's long term financial position; and finance expenditure on public pensions.
Initial Funds	Primary international reserve in excess of the amount needed to accomplish BOB principal objectives and finance the international transactions of Botswana and likely to remain in that position for some time.	Petroleum revenue assessed, collected and accounted for by the Ghana Revenue Authority	US1 Billion Provided by the Federal, State, Federal Capital Territory and Local governments	Created in August 2012 with Voluntary donations from Rwandan citizens in Rwanda, Rwandan citizens abroad, private Companies and Friends of Rwanda. Valuation as at June 2013 was USD\$41 million.	Oil, Gas, Minerals Revenue
Management of assets	Part of BoB	Bank of Ghana may appoint Asset managers	May appoint asset managers outside the Authority to manage its assets as may be specified by the Board.		May appoint asset managers outside the Authority to manage its assets as may be specified by the Board.
Governance	BoB in consultation with the Minister	Minister develops an investment policy Minister be responsible for the overall management Bank of Ghana responsible for the day-to-day management of the Petroleum Holding Fund, the Ghana Petroleum Funds and subsequently the Ghana Petroleum Wealth Fund	Governing Council-appointed President on the recommendation of the Minister, who shall consult with the National Economic Council to provide advice and counsel generally to the Board Board of directors-appointed by President on the recommendation of the Minister, who shall consult with the National Economic Council responsible for the attainment of the objects of the Authority and such other functions Managing Director- appointed by the President	Contributions will be reflected in the National Budget approved by Parliament. For the transition, the Fund will be managed directly by the Ministry of Finance and Economic Planning. In the future, the Fund will be under an independent management.	Governing Council-appointed President on the recommendation of the cabinet secretary Board of directors-appointed by President on the recommendation of the cabinet secretary MD/CEO- appointed by the Board of directors
Ownership interest	Public	Public	Federal, State, Federal Capital Territory and Local governments of the Federation on behalf of the people of Nigeria.	Public	Public
Reporting	Part of BoB	Bank of Ghana submits quarterly to the Minister and to the Investment Advisory Committee (advises the Minister) & Parliament. (Investment Advisory Committee nominated by the minister for appointment by the President)	Submit Annual Report- to President, the Minister, the Central Bank of Nigeria, the National Economic Council, the National Assembly and each State House of Assembly	Parliament	Submit Annual Report- to President, the cabinet secretary, the National Assembly and each county Assembly
Communication	Part of BoB	Petroleum receipts published by the Minister in the Gazette and in at least two state owned daily newspapers	Communicates investment objectives in a manner generally consistent with the guiding objectives underpinning the Santiago Principles.	Full public disclosure	Full public disclosure
Exemptions	Part of BoB	N/A	Authority and its wholly-owned subsidiaries exempt from the provisions of any and all taxes, fees, imposts or similar fiscal laws or regulation of the Federal, State, Local Governments of the Federal Republic of Nigeria.	-	Authority and its wholly-owned subsidiaries exempt from procurement requirements, the provisions of any and all taxes, fees similar fiscal laws or regulation of the National and county Governments.

PART 4: STRATEGIC GOVERNMENT INVESTMENT FRAMEWORK

CHAPTER TEN

STRATEGIC GOVERNMENT INVESTMENT FRAMEWORK

Background

Government owned entities are established as vehicles for socio-economic development. At independence, the Government was clear as to where to invest and had clear objectives for the investments. The investments in the 1960s and early 1970s contributed significantly to national development. In the 1980s and 1990s the government on the advice of the World Bank decided to divest from commercial activities, not because the investments were bad but governance and management had gone horribly wrong. The real issue was not investments themselves, but the human capacity (people).

Policy Issues and Challenges

The mainstream government policy on investment, including the divestiture policy, is premised on the fact that the government has no business doing business, and therefore, it should divest from commercial activities. In line with this policy, a Privatization Commission was established under the Privatization Act, to steer the process. The proposals for divestment are originated either by the sector ministry, the National Treasury or Privatization Commission and approved by the Cabinet. The current approved Privatization Programme is shown in Table 9.1. The programme contains a mix of commercial and strategic corporations, as well as subsidiaries. Experience from other countries, however, shows that state capitalism can thrive well and for strategic reasons, as well as reduction of dependence on the Exchequer (tax revenue). It is proposed that all commercial strategic corporations will henceforth be managed by GIC.

Recommendations

It is recommended that the functions of the Privatization Commission be integrated into the GIC and the current privatization programme be referred to it to determine how best to proceed with the programme. As far as is possible, there should be active efforts to grow the value of existing assets before disposal; and that the proposed GIC be empowered to make Government investment decisions on portfolio basis and to hold the government shares in Government Linked companies with a view to creating value.

Table 10.1: Current Privatization Programme

INSTITUTION & PUBLIC SECTOR SHAREHOLDING	OBJECTIVE	IMPLEMENTATION STATUS
<p>1. Chemelil Sugar Company - ADC: 96.21% and DBK: 1.42%</p> <p>2. South Nyanza Sugar Company Limited - GOK: 98.8%, ICDC: 0.7% and IDB: 0.3%</p> <p>3. Nzoia Sugar Company - GOK: 97.93%, IDB Capital Limited (0.94%).</p> <p>4. Miwani Sugar Company Ltd. (Under receivership). GOK: 49%</p> <p>5. Muhoroni Sugar Company Ltd. (Under receivership) - ADC: 16.9%, Development Bank of Kenya: 0.3%.</p>	<ul style="list-style-type: none"> Enhance efficiency of the sugar sector; Meet Government – COMESA Sugar safeguard commitment to privatize sugar companies; and Privatization will raise funds for the rehabilitation of the sugar factories. (Est. Kshs. 50 billion) Privatization will address the excess debt situation 	<p>Detailed Privatization Proposal approved by the Cabinet in October 2010 and submitted to Parliament by the Treasury in November (2010) for presentation to the Finance, Planning & Trade Committee (FP&T) of Parliament as required under the Privatization Act. First presentation to FP&T Committee made in January 2011. Thereafter the Parliamentary Committee tied approval to appointment of Commission members, whose term had expired on 31st December 2010.</p> <p>Commission members appointed on 19th September 2012. Final presentation made to the FP&T Committee by the then Minister for Finance on 28th November 2012.</p> <p>On basis of the FP&TC Committee's report, on 9th January 2013, Parliament directed that sugar companies' privatization be postponed until such a time when all the legislation affecting the Agricultural Sector (sugar) have been enacted and the county Governments are in place. The laws were passed by Parliament the following day.</p> <p>Implementation awaiting Parliamentary approval to progress the transaction. National Treasury has requested the Clerk of the National Assembly to facilitate meeting for the Cabinet Secretary to the Treasury to make presentation to the Committee.</p> <p>Updating of due diligence work on-going as the Commission waits for approval to proceed with implementation.</p>
<p>6. KTDC Associated Companies: (i) International Hotels Kenya Limited – KTDC: 40%; (ii) Kenya Hotels Properties Limited – KTDC: 33.83%; (iii) Mountain Lodge Limited – KTDC: 39.11%; and Ark Limited – KTDC: 5.64%.</p> <p>7. Kabarnet Hotel - KDTC: 98.2%</p> <p>8. Mt Elgon Lodge Limited – KTDC: 72.92%; Kitale Municipal Council: 13.54%; and Trans-Nzoia County Council: 13.54%.</p> <p>9. Golf Hotel Limited – KTDC: 80%; Kakamega Municipal Council: 20%.</p> <p>10. Sunset Hotel Limited – KTDC: 95.4%; Kisumu City: 4.6%.</p> <p>11. Kenya Safari Lodges and Hotels Limited (KSLH) : KTDC: 63.42%; KWS 0.02%.</p>	<ul style="list-style-type: none"> Mobilization of resources to rehabilitate and modernize existing facilities; Privatization proceeds will finance the hospitality industry through loans and other investments by KTDC; and The recommended privatization method will address the best option for ownership and management of hotels owned by KTDC. 	<p>Detailed Privatization Proposal on the privatization of nine KTDC investments submitted to the Treasury for consideration by the Cabinet in December 2009. The proposal was discussed and endorsed by the Cabinet Committee on Finance, Administration and Planning in September 2010. Thereafter it was discussed by the Cabinet but no specific direction given. On 3rd March 2011 the privatization was stopped by the Government on account of the hotels being strategic national assets. Subsequently, following re-submission of the proposal in August 2011, the Cabinet approved the sale of three hotels: Intercontinental, the Hilton and the Mountain Lodge Hotels through pre-emptive rights to existing shareholders. The approved proposal was submitted to Parliament in November 2011.</p> <p>Finance, Planning and Trade Committee report approving the three transactions adopted by Parliament on 9th January 2013.</p> <p>The other hotels, which are majority KTDC hotels and had been proposed to be privatized as a chain by bringing in a strategic partner (51%) are deteriorating rapidly and have remained a major burden to KTDC which is supporting most of them which are not able to meet their operational costs.</p> <p>Completion of the Intercontinental, the Hilton and the Mountain Lodge Hotels' transactions is awaiting submission of updated due diligence reports by the Transaction Advisors.</p>
<p>12. Kenya Wine Agencies – ICDC: 72.6%.</p>	<ul style="list-style-type: none"> To ensure its continued viability. 	<p>Detailed Privatization Proposal approved by Cabinet on 17th November 2011. Transaction was subsequently approved by Parliament on 9th January 2013. Preparations for negotiations to sell 26% to Distel of South Africa completed. Negotiations planned to commence on 13th August with a completion date of 31st August 2013.</p>
<p>13. Development Bank of Kenya: ICDC: 89.3%</p>	<ul style="list-style-type: none"> To release funds invested by ICDC for lending to industry and other enterprises; Mobilize necessary resources to support ICDC's future growth; Support the growth and stability of the financial markets; Enhance transparency and corporate 	<p>Following request by the National Treasury, the process of updating detailed Privatization Proposal finalised and submitted earlier (2009) has commenced. EOIs for consultancy services have been received and evaluated and procurement of consultancy services is expected to be completed in August. We are planning to resubmit the proposal in the 2nd quarter of 2013/14.</p>

INSTITUTION & PUBLIC SECTOR SHAREHOLDING	OBJECTIVE	IMPLEMENTATION STATUS
	<ul style="list-style-type: none"> governance; and Broaden shareholding and capital markets 	
14. Agrochemical and Food Corporation - ADC: 28.2%; and ICDC: 28.8%.	<ul style="list-style-type: none"> To address financial and management resource needs; and To address the company's excess debt. 	Following request by the National Treasury, updating of detailed proposal finalised and submitted earlier (2010) was done. The proposal was resubmitted to the National Treasury on 28th June 2013, for consideration by the Cabinet.
15. National Bank of Kenya - GOK 22.5%; NSSF: 48.05%	<ul style="list-style-type: none"> To mobilize necessary resources to support the bank's future growth; Support the growth and stability of the financial sector and the capital markets; Enhance transparency, corporate governance; Broaden shareholding and capital markets; and To recoup part of Government investment to finance other development projects. 	<p>Following request by the National Treasury, the process of updating detailed Privatization Proposal finalised and submitted earlier (2009) has commenced. EOIs for consultancy services have been received and evaluated and procurement of consultancy services is expected to be completed in August/September. We are planning to resubmit the proposal in the 2nd quarter of 2013/14.</p> <p>The updated work will facilitate agreement between NSSF and the Treasury on conversion of Preference Shares, held by GOK and NSSF, to ordinary shares.</p>
16. New Kenya Co-operative Creameries - GOK 100%	<ul style="list-style-type: none"> Privatization of the Company will address future governance and sustainability of its operations. 	Detailed Privatization proposal was discussed by the Commission in December 2010. However, stakeholders' consultations which had been planned to take place in January 2011 could not take place in the absence of the Commission Board. The Commission has now commenced the updating of the due diligence and options analysis. This will be followed by Stakeholder consultations as soon as possible.
17. Kenya Pipeline Company Limited - GOK: 100%	<ul style="list-style-type: none"> Mobilization of resources for additional investments; Enhancement of transparency and corporate governance; Broadening of shareholding in the economy; Development of the Capital Markets; and Raising of requisite resources to support the Government budget. 	Detailed Privatization proposal was discussed by the Commission in December 2010. However, stakeholders' consultations which had been planned to take place in January 2011 could not take place in the absence of the Commission Board. The Commission has now commenced the updating of the due diligence and options analysis. This will be followed by Stakeholder consultations as soon as possible.
18. Consolidated Bank of Kenya: Deposit Protection Fund - 50.2%; and shares allocated to a number of State Corporations and Government institutions on account of deposits placed by them in the weak banks merged to form Consolidated Bank: 48.8%.	<ul style="list-style-type: none"> To mobilize necessary resources to support the bank's future growth; Support the growth and stability of the financial sector and capital markets; Enhance transparency and corporate governance; and Broaden shareholding and capital markets. 	Preparatory work was completed in May 2011. However, stakeholders' consultations could not take place in the absence of the Commission Board. Updating of due diligence work and options analysis is expected to be completed in August/September 2013.
19. KenGen - GOK: 70%.	<ul style="list-style-type: none"> Mobilization of resources for additional investments; Enhancement of transparency and corporate governance; Broadening of shareholding in the economy; Development of the Capital Markets; and Raising of requisite resources to support the Government budget. 	<p>Preparatory work was completed in May 2011. However, stakeholders' consultations could not take place in the absence of the Commission Board.</p> <p>Updating of due diligence work and options analysis was carried out in May/June 2013. Finalization/updating of detailed proposal is awaiting submission of final report by the consultants.</p>
20. East African Portland Cement- NSSF: 27%; GOK: 25%.	<ul style="list-style-type: none"> To mobilize resources for additional investments; Enhance transparency and corporate governance; Broaden and develop shareholding and capital markets in the economy; and Raise requisite resources to support the 	<p>Preparatory work completed and detailed proposal submitted to the Treasury on 28th June 2013 for consideration by the Cabinet.</p> <p>Earlier, progress hindered by resistance from the Company. Work commenced after meetings between EAPCC board and the Commission Board and signing of non-disclosure and non-participation agreements by the consultants.</p>

INSTITUTION & PUBLIC SECTOR SHAREHOLDING	OBJECTIVE	IMPLEMENTATION STATUS
	Government budget.	
21. Kenya Meat Commission – GOK: 100%	<ul style="list-style-type: none"> Restructuring and privatization will address KMC's future viability; and To address the required financial and management resources of the Company 	<p>Preparatory work completed and detailed proposal submitted to the Treasury on 28th June 2013 for consideration by the Cabinet.</p> <p>Earlier, progress hindered by unavailability of information required to carry out the due diligence work.</p>
22. Isolated Power Stations	<ul style="list-style-type: none"> Concessioning was approved by Parliament through Seasonal Paper on Energy in October 2004. Inclusion of the Isolated Power Stations in the Privatization Programme will facilitate comprehensive review of the most appropriate effective way of operating the stations in the future. 	Preparation of detailed proposal awaiting submission of a final report from the consultants, incorporating comments made by the Commission, the Ministry of Energy and other stakeholders at a key stakeholders' meeting held recently.
23. Kenya Ports Authority - Eldoret Container Terminal - GOK: 100%	<ul style="list-style-type: none"> Was completed in 1994 but has not yet been operationalized; Its privatization will enhance Kenya's regional competitiveness; and Facilitate investment and economic growth. 	
24. Kenya Ports Authority - Outsourcing of 100%. Stevedoring services - GOK: 100%	<ul style="list-style-type: none"> To improve efficiency in delivery of services through mobilization of private sector financial and management resources. 	
25. Kenya Ports Authority - Development of Berths No. 11 -14 - GOK: 100%	<ul style="list-style-type: none"> Capacity expansion through mobilization of private sector capital and management resources (Est. Kshs.11 billion) 	<p>Due diligence, restructuring and privatization options studies were completed in November 2010. A stakeholder's workshop held in Mombasa in February 2011 to share findings and recommendations of the consultants was boycotted by the Dock Workers Union who organized demonstrations in Mombasa town and were joined by some Members of Parliament from the Mombasa County.</p> <p>The Dock Workers appeared to sabotage any efforts to share the consultancy findings with key stakeholders. Subsequently, through an executive order the Government stopped all the work and discussions on the privatization of the three projects at the port.</p> <p>Following submission by KPA that the need for privatization earlier requested by the Authority had been overtaken by events, the Commission is reviewing the same with a view to recommending removal of the projects from the Privatization Programme. Nevertheless, to improve efficiency and mobilize additional resources, it is still considered necessary to reorganize KPA as a landlord port.</p>

Identification and Approval of Strategic Government Projects

In order to ensure that the Government focuses itself to only those areas that are strategic, there is need for clear criteria to guide in identification and determination of projects and programmes that are considered strategic.

The criteria for determining strategic commercial corporations shall include, among others, commercial corporations that

- a. have a strategic importance in national development but operate in a largely commercial environment within the National Vision.
- b. Are usually monopolies or operate in oligopolistic markets.
- c. Often are not capable of raising sufficient debt on the strength of their own balance sheet and therefore require government support
- d. Are often assigned the implementation of public projects that are economically and socially desirable but may not be financially viable (e.g. passenger rail service)
- e. Often carry huge potential fiscal risks (contingent liabilities) on account of their borrowings and liabilities guaranteed by the Government, and
- f. Are most amenable to Public Private Partnerships

Declaration of a Government Entity as Strategic

The President, on the advice of the Cabinet and based on national development plans and the Vision, shall declare programmes or projects to be of a strategic nature and shall vest them to an appropriate strategic corporation under GIC for implementation.

Facilitation Strategy & Resourcing of Strategic Government Projects

The National Treasury carries the responsibility of allocating budgetary resources to Government projects and programmes but the final decision on budget allocation is made in Parliament. Under the current arrangements State Corporations and Agencies are allocated funds by the National Treasury through the parent ministry, but are held to account individually on expenditure despite timing and mode of disbursement.

To avoid delays in project completion, it is recommended that:

- GIC determines, in consultation with the National Treasury, the most appropriate funding mechanism and National Treasury shall endeavour to secure the agreed funding expeditiously.
- Where the agreed mode of implementation is Public Private Partnerships, GIC will be required to submit proposals for consideration within the provisions of the Public Private Partnership Act.
- GIC shall submit to the National Treasury and Parliament project/programmes implementation plans with life-cycle forward budgets for the project or programmes, indicating annual funding requirements for each project or programmes for inclusion in the national budget and national borrowing programmes, where applicable.
- The National Treasury shall ensure timely submission of requests for approvals from Parliament for loan guarantees, where applicable.
- Parliament will be notified of strategic government projects at least four months before commencement of the financial year where a project is to be financed through exchequer funds.
- On approval of the budget by Parliament, NT shall ensure timely disbursement of funds to GIC in line with agreed funding programme.
- The funds for projects should be disbursed directly to strategic State Corporations and State Agencies to avoid inordinate delays occasioned by disbursement through parent ministries.

- GIC and the National Treasury shall agree on a reporting framework, which shall include among others, debt service obligations by all strategic corporations.
- The entities shall be accountable to the President for project management and completion.

Intergovernmental Coordination

Intergovernmental Relations Act provides mechanisms for coordination between the two levels of government. In the implementation of strategic Government projects, the implementing agency should establish liaison office in the counties for purposes of integration with county development plans.

Capacity and Capability Building

Lack of technical capacity at implementing and oversight agencies has been identified as a key hindrance to effective and timely implementation of projects. It is therefore critical and it is recommended that the government makes deliberate efforts at enhancing capacity for project implementation in **Government Ministries, State Corporations and State agencies, and Parliament.**

CHAPTER ELEVEN

STRENGTHENING PERFORMANCE MANAGEMENT FOR SERVICE DELIVERY

Background

The Government introduced performance contracting as a management accountability frame work in the civil service in the year 2004. This followed the recommendations of the Economic Recovery Strategy for Wealth and Employment creation (ERS, 2003-2007). The strategy recommended sweeping reforms in the management of the public service observing, at the onset, that the public sector

“.....is excessively large thereby absorbing inordinately large amounts of national resources. The sector is characterized by wastefulness and inefficiency...”.

The strategy further recognized that the problems attributed to many State Corporations arise from lack of clear performance contracts that facilitate the monitoring of the performance of the Chief Executive Officers appointed to manage the Corporations. It recommended reorientation of the public sector management to accelerate ministerial rationalization and develop Strategic Plans for Ministries/departments and downstream institution and develop, introduce and institutionalize performance based management practices in the public service.

Performance Management in Government Owned Entities

Status of State Corporations prior to the introduction of Performance Contracts

State Corporations like all Public Service Agencies were performing very poorly. The poor performance affected the nation in that the quality of lives for citizens was declining; poverty, diseases, hunger, ignorance, social injustices, human dignity and economic welfare for all became a major challenge; and public trust in Government by the citizens deteriorated. Among the identified causes of poor performance in State Corporations were excessive controls; multiplicity of principals with multiple and sometimes conflicting objectives, which fuzzied the agencies' perception of what is expected of them; frequent political interference; poor management; outright mismanagement; and poor political, economic and corporate governance. Other observations made were:

- Almost all State Corporations did not have a clearly articulated mission, a shared vision, clear strategic direction or Strategic Plans;
- Corporate governance was regarded as a private sector affair;
- Determination of performance was based on how well processes and activities were carried out;
- Capacity to absorb resources was limited; and
- Most of the State Corporations especially the Service State Corporations believed that they did not produce outputs and outcomes (Results), did not have customers and could not make profits.

The State Corporation had become part of the bigger problem in draining the Exchequer for financial support in form of grants and loans and an impediment to economic growth and recovery of the economy

Introduction of Performance Contracting

Performance Contracting was first introduced in Kenya through the Parastatal Reform strategy Paper which was approved in 1991. This strategy paper saw the introduction of performance contracts on pilot basis to two Agencies: Kenya Railways and National Cereals and Produce Board. Performance Contracts in the State Corporations, was reintroduced in 2004 as part of the wider Civil Service reforms instituted under the Economic Recovery Strategy for Wealth and Employment Creation. An administrative circular was issued to that effect. A subsidiary legislation for State Corporations Act, Legal Notice No 93 of August 2004 was later issued. The legal Notice No 93 of 2004 outlined the functions of the Board of Directors, Inspector General Corporations, the Parent Ministry and the Performance Contracting Department in the process of PC. The issuance of the Notice was as recognition that State Corporations operated under various Acts of Parliament or establishing instruments which needed to be harmonized.

The PC was essentially a reform strategy to reorient management of the public service from focusing on processes, procedures and activities to focusing on results in order to:

- Reengineer operations to keep ahead of growing public demand for better services;
- Reposition country on the growth trajectory;
- Create competitive advantage for the country; and
- Restore trust in Government, and the dignity of the public service.

The following are key achievement by State Corporation since the introduction of Performance Contracts:

i. Enhanced revenue generation in State Corporations:

Within the first nine months of performance contracting, revenue for the 16 pilot State Corporations increased by 382%.

Commercial State Corporations which earlier never made profits now make profits and pay dividends to the National Treasury as the major shareholder.

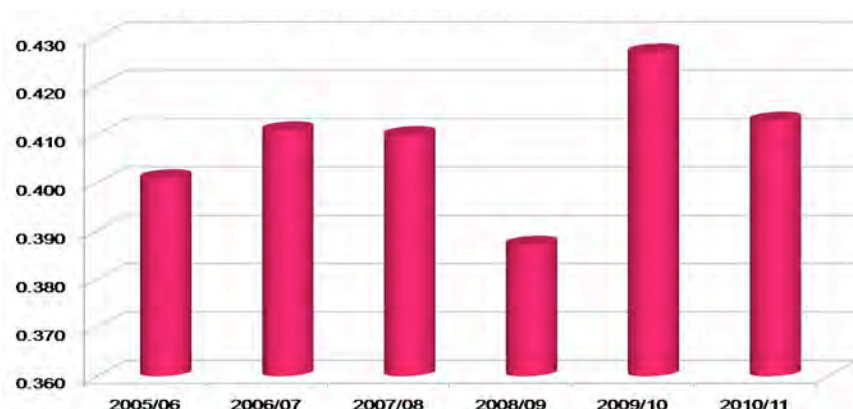
ii. Assets Management:

State Corporations managed to identify all their assets and acquire title deeds for their land;

iii. Service Delivery

All State Corporations identified their customers and developed Customer Service Charters for service delivery. According to the last survey, customer satisfaction levels with public service stood at 63%.

Chart 11.1: Performance of State Corporations



iv. Improve Corporate Governance

Corporate Governance according to the 2011 Corporate Governance Survey level in the State Corporation the index stood at 70%;

v. Reduced Controls

Autonomy in management of the State Corporations which has reduced unnecessary controls and multiplicity of principles;

Establishment of Mission and Vision statements, clear strategic objectives and Strategic Plans have been the basis of work plans and performance targets in State Corporations;

vi. Prudent Utilization of Resources

Targets set by State Corporations are aligned to the budget hence utilization of resources has been enhanced;

vii. Focus on Results

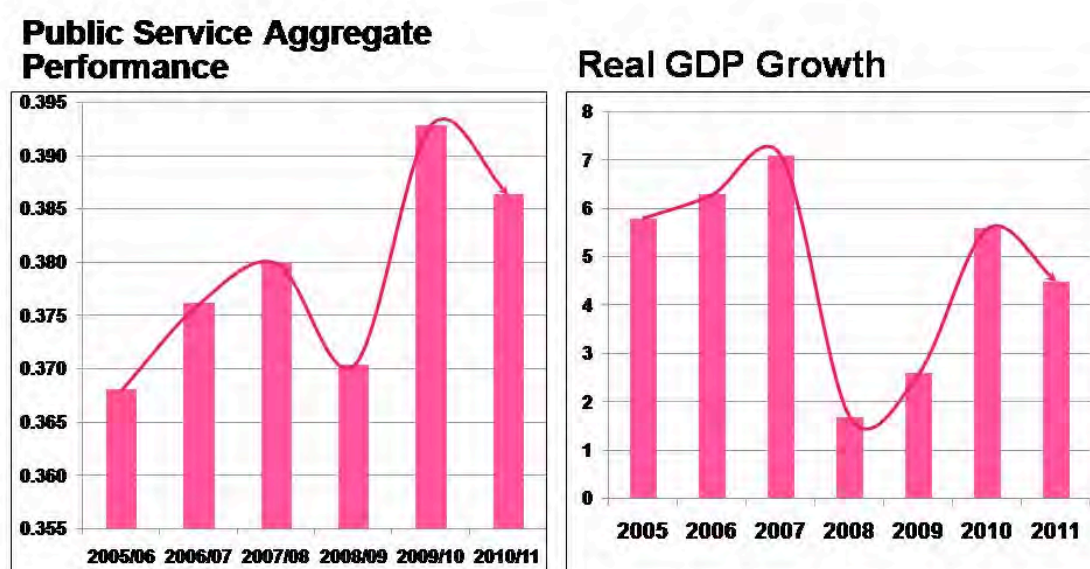
Creation of responsive, motivated and skilled employees;

Increased number of innovations that are reported by State Corporations to enhance service delivery; and

State Corporations now focus on results and not processes.

Analysis of performance data since introduction of performance contracting in 2004 shows a distinct correlation between the performance of State Corporations performance, the public sector and the performance of the national economy. The performance movements (State Corporations, public service & the economy) are shown in the three charts below;

Chart 11.2: Comparing Public Service Performance & GDP Growth



- i. Institutions that have their top management supporting the performance contract process have consistently performed very well;
- ii. The parent ministries have in some cases been an impediment to achievement of targets for state corporations due to failure to grant required approvals at the right time;

- iii. Lack of comprehensive incentive/sanctions framework has demoralized staff of many State corporations;
- iv. Performance Contracting is not anchored in any law. Some State Corporations have taken advantage of that and declined to sign PCs;
- v. Key indicators in the PC matrices have helped State Corporations especially on management of assets, revenue generation, service delivery charters and have given management some autonomy in management;
- vi. PCs in most state corporations are tagged to specific individual officers and other employees do not associate themselves with the process;
- vii. Most state corporations have failed to cascade the performance contract; and
- viii. Performance Contract going by the results of previous performance has in a great way addressed some of the concerns that all other reform strategies could not address.

Policy Issues and Challenges

While the implementation of reforms and performance contracting has been going on since 2004, it has been carried out in the context of largely discordant strategic plans with scant linkages to a common and integrated vision. Lack of implementation of the sector standards has resulted in sectors concentrating on inputs, process and output indicators which do not link performance to outcomes. There have been concerns from stakeholders including the general public about the Government services delivery, and the inconsistency between perceived performance of various government agencies and their performance ratings. Some of the challenges experienced include:

- i. Lack of clarity on the role that state owned enterprises should play in the economy. This is compounded by the apparent differences in opinion in respect of the exact role of the state in the national development effort;
- ii. Poor linkage of state owned enterprise activity with the national mandate;
- iii. Conflicting definition of what a state corporation is in the Kenyan context compounded by multiple legal and regulatory regimes creating significant ownership and oversight challenges;
- iv. Inadequate policy and policy coordination leading to poor definition of mandates, conflicts in mandates, as well as fragmentation of mandates that facilitate the proliferation of poorly resourced state owned entities. It also affects the facilitative role of the state in ensuring effective private sector development that supports the national development effort;
- v. Poor governance in government owned entities leading to resource loss and burdening the public purse, including a multitude of legal and institutional frameworks that generate multiple reporting and accountability lines, compounding the challenge of effectiveness of Boards and Chief Executive Officers;
- vi. Lack of clarity as well as abuse in the process of establishment and dissolution of government owned entities leading to lack of an accurate database on the number of GOEs; and
- vii. An inadequate performance management framework that effectively links performance of GOEs to national development goals and fails to adequately link individual performance to institutional performance.

Recommendations on Performance Contracting for Government Owned Entities

The Malaysian case study demonstrates the fundamental role a centralized performance management unit plays. Such a framework would bring in all the Government Owned Entities as well as the measures and the National Key Result Areas (NKRAs) as related to the national development goals. In the case of Malaysia, the framework measures both the Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP). This allows and ensures that all GOEs are focused on the national goals by providing delivery support to the GOEs, providing independent performance and progress reviews and catalyse bold changes in the public and private sector delivery. Under the Malaysian approach, PEMANDU is governed by a delivery taskforce responsible to the NKEA's and chaired by the Prime Minister. This enhances credibility, accountability from all SOEs and transparency on performance.

It is therefore recommended that:

- i. All Government Owned Entities (GOEs) should be on performance to enhance the gains already achieved;
- ii. The GIC & NACAOO and the Vision Delivery Secretariat (VDS) should develop a performance management instrument focused on the National Key Result Areas (NKREA's) as well as Sector Performance Standards. Using the mission analysis approach, the instrument should prescribe the cascading mechanism at all levels and the performance collaboration relationship across the sector value chain. The instrument should also provide for intermediate variables that are measurable and are linked to the outcomes for the SOE;
- iii. The Government Owned Entities should have defined linkages between their service charter and the performance contracts linked to their Key Result Areas (KRA's);
- iv. The contracting principal should provide goals linked on the national goals as shown in Table 10.1. These should include specific outputs and outcomes in the employment contracts of the corporation's chief executive officer & management.

Table 11.1: Proposed Performance Management Framework for Government Owned Entities

Agency	Contracting Principal & Evaluator
GIC	President
SC	GIC
NACAOO	President
State Agencies	Cabinet Secretaries
County Corporations	Governor
County Agencies	County Department Executive

- v. The rewards and sanctions should be agreed upon by the contracting principals and linked to the performance contract.
- vi. Beyond ranking, the performance management needs to analyse the outputs of GOEs year on year focusing on the bottom line for state corporations and on Key Result Areas (KRA's) for the state agencies, county corporations and county agencies. The performance analysis should be undertaken by the governing body (GIC & NACAOO) providing a sector based dashboard on the GOE's performance.
- vii. Each Government Owned Entity's performance should be benchmarked against a **Domestic Reference Group** and an **International Reference Group**. In addition, the oversight bodies should develop and operationalise a **Government Owned Entities Corporate Governance Rating Index** that will allow monitoring and evaluation of

corporate governance that will allow comparison with domestic private sector as well as benchmark them globally;

- viii. For all GOEs, the performance contracting cycle should be aligned to that of budgeting so that national priorities, policies and programmes are determined before the negotiation of performance contracts.
- ix. The performance management system should be anchored in the overarching law
- x. The evaluation and contracting shall guide by the framework in Table 11.1.

PART 5:

**THE GOVERNMENT
OWED ENTERPRISES
TRANSFORMATION
AGENDA**

CHAPTER TWELVE

THE GOVERNMENT OWNED ENTITIES TRANSFORMATION AGENDA

Pillars of the Government Owned Entities Transformation Agenda

The President during the launch of the Taskforce pointed out the fact that government owned entities will continue to play an important role in the development process of the country. Kenya Vision 2030 and the Second Medium Term Plan require a transformational mind-set in the way business is conducted. In this respect, Government Owned Entities (GOEs) will be expected to play five (5) key roles:

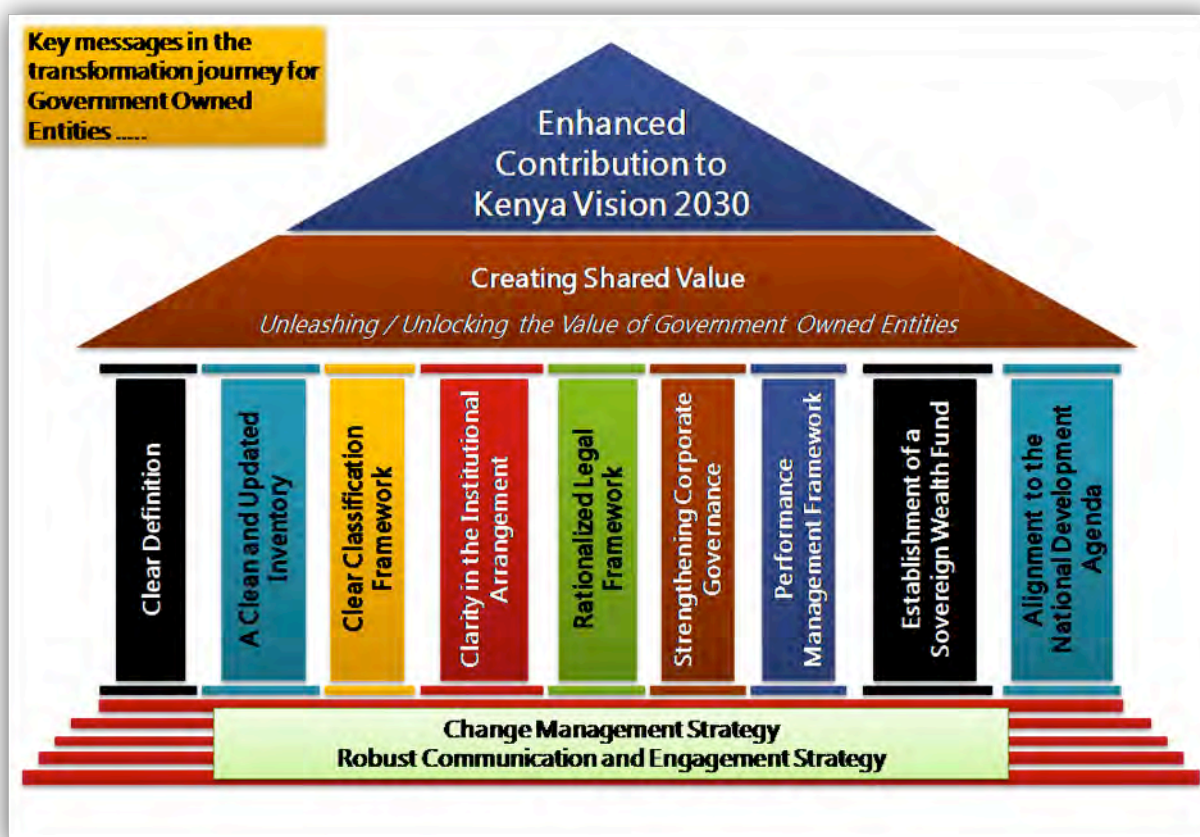
1. Promote and /or accelerate economic growth and development that will drive the social and economic transformation of Kenya to, “a globally competitive and prosperous country with a high quality of life by 2030;
2. Support efforts aimed at building the capability and technical capacity of the state in facilitating and/or promoting national development;
3. Improving delivery of public services, including meeting basic needs of citizens;
4. Support the creation of good and widespread employment opportunities in various across the entire country; and
5. Support targeted and judicious building of regional and international partnerships.

In gearing GOEs to play these roles, it bears reminding that, currently, a number of policy issues and challenges afflict GOEs in Kenya, including:

1. Lack of clarity on the role that State Corporations should play in the economy. This is compounded by the apparent differences in opinion in respect of the exact role of the state in the national development effort;
2. Poor linkage of State Corporations activity with the national development goals;
3. Conflicting definition of what a state corporation is in the Kenyan context compounded by multiple legal and regulatory regimes creating significant ownership and oversight challenges;
4. Inadequate policy and policy coordination leading to poor definition of mandates, conflicts in mandates, as well as fragmentation of mandates that facilitate the proliferation of poorly resourced State Corporations. It also affects the facilitative role of the state in ensuring effective private sector development that supports the national development effort;
5. Poor governance leading to resource loss and burdening the public purse, including a multitude of legal and institutional frameworks that generate multiple reporting and accountability lines, compounding the challenge of effectiveness of Boards and Chief Executive Officers;
6. A number of Boards have been weak and/or ineffective, leading to failure to provide strategic direction, facilitating their emasculation;
7. Weak human resource and institutional capacity to attract and retain the skill sets needed to drive performance;
8. Lack of a clear government policy in respect of government linked companies;

9. Lack of clarity as well as abuse in the process of establishment and dissolution of government owned entities leading to lack of an accurate database on the number of GOEs; and
10. An inadequate performance management framework that effectively links performance of GOEs to national development goals and fails to adequately link individual performance to institutional performance.

Chart 12.1: The Pillars of the Transformation Agenda for Government Owned Entities



To address these challenges, the Presidential Taskforce on Parastatal Reforms made a raft of recommendations, responding to the terms of reference assigned to it and articulated in Table 12.1. As illustrated in Chart 12.1, these recommendations and proposals are geared at transforming the operations and performance of government owned entities to ensure that they generate value for money expended as well as reduce dependence on the exchequer of the national governments and county governments.

a. A Clear Definition of Government Owned Entities

The current approach to management and classification was examined and the problem traced to the current definition of entities. **In this respect, the all entities previously known as State Corporations shall henceforth be known generally as Government Owned Entities (GOEs).** These GOEs have been clustered into four (4) broad classifications as follows.

State Corporations

In order to remove ambiguity in definition and facilitate differentiated regulatory regime for Government Owned Entities a “State Corporation” shall be an entity howsoever incorporated

that is solely or majority owned by the government or its agent for commercial purposes. A commercial function for the purpose of this policy is a function:

- i. the dynamics of which are governed by a competitive profit driven market:
- ii. that can be performed commercially but serves a strategic socio-economic.

State Corporations therefore shall include;

- i. Commercial State Corporations; and
- ii. Commercial State Corporations with strategic functions to be defined through the national development planning process

These entities shall be incorporated under the Companies Act Chapter 486.

State Agencies

There are other incorporated entities outside the mainstream civil service established for purposes of public service delivery. These bodies are agencies of the Government established for specified purposes and for purposes of policy and regulation and shall be known as State Agencies. For the avoidance of doubt a State Agency shall be an entity howsoever incorporated by the Government to undertake a specific Government objective in delivering public service including regulation. These shall include:

- i. Executive agencies
- ii. Independent Regulatory Agencies
- iii. Research, Public Universities, Tertiary Education and Training Institutions

County Corporations

A County Corporation is an entity howsoever incorporated that is solely or majority owned by a county government or its agent for commercial purposes. A commercial function for the purpose of this policy is a function:

- i. the dynamics of which are governed by a competitive profit driven market:
- ii. That can be performed commercially but serves a strategic socio-economic objective as from time to time defined by the President.

County Agencies

A County Agency is an entity howsoever incorporated by a county government to undertake a specific strategic government objective in delivering public service. Such objective includes regulation and service delivery. These include Executive agencies; and Joint County Authorities.

Exemptions from the Definition of Government Owned Entities

For purposes of this report and other consequential legal provisions, the organisations shown in the Box shall not be considered to be Government Owned Entities (GOEs).

ENTITIES EXEMPTED FROM DEFINITION OF GOVERNMENT OWNED ENTITIES

- Cabinet Secretary to the National Treasury INC
- Co-operative Societies
- Building Societies
- Government Linked Corporations or any other Corporations in which the government, its agents or combined ownership with its agents is less than fifty percent (50%) of the issued share capital
- State Organs as defined in the Constitution
- Business and Professional Associations, even if established by law
- Civil society, volunteer organizations and Trade Unions, even if established by law
- Kenya Universities and Colleges Central Placement Service
- Witness Protection Agency

b. A Clear Classification of Government Entities

In line with the proposed definition it is recommended that the current entities referred to as State corporations be classified as State Corporations; Executive Agencies; Independent Regulatory agencies; and Research, Public Universities, Education and Training Institutions. In this regard, the GOEs, together with their subsidiaries are classified as shown in the table below.

c. A Clean and Updated Inventory of Government Owned Entities

This report also provides the first cleaned, updated and authoritative list of Government Owned Entities as well as their subsidiaries.

d. Clarity in the Institutional Arrangement of Government Entities

The existing institutional arrangement created an environment where GOEs had multiple reporting centres, which would at times provide conflicting policy direction, with resultant negative consequences in performance. To cure this state of affairs, this report has recommended that there should be a clear distinction between commercial and non-commercial functions in government owned entities. Where non-commercial activities are embedded in the activities of a commercial, but strategic state corporation, this will be treated as public service obligations and funding adequately provided to cover the same. In addition, there should a clear separation between policy, regulatory and service delivery functions for the GOEs. The fusing of regulatory and sector development functions was considered appropriate and should be considered on a sector by sector basis.

This report also recommends that all agencies designated to exercise ownership will ensure that prior approval is obtained from relevant authorities prior to:

- The establishment or participation in the establishment of a company;
- Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- Acquisition or disposal of a significant shareholding in a GOE;
- Acquisition or disposal of a significant asset;
- Commencement or cessation of a significant business activity; and
- A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement

Further, the Government will have a ***Centralized Ownership and Oversight Model*** of all GOEs. At the national level, the ownership of all State Corporations and agencies will remain with the National Treasury as per the constitutional mandate. The shareholding role for commercial entities shall however be exercised directly by the National Treasury through a Holding Company (Government Investment Corporation -GIC), which the National Treasury shall incorporate under the Companies Act.

At the County level, the ownership of all County Corporations and Agencies will remain with the County Treasury as per the constitution of Kenya and the County Governments Act.

Exclusive oversight, will be exercised for Kenya's Government Owned Entities as follows:

- Government Investment Corporation (GIC) by the President;
- National and County Agencies Oversight Office (NACAOO) by the President;
- State Corporations by the Government Investment Corporation;
- State Agencies by NACAOO

- County Corporations & Agencies by County Executive on the basis of guidelines and standards/norms provided by NACAOO

The Office of the Auditor General (OAG) shall provide statutory audit to all the above institutions save for the fact that in the case of state corporations and county corporations OAG may delegate the same to private audit for purposes of expediting the audit process.

e. Establishment of a Sovereign Wealth Fund

The primary goal for establishing Kenya's Sovereign Wealth Fund is to achieve the policy objective of securing an income from current resources for future generations. On-going developments in the Oil, Gas and Minerals sector requires forward thinking in respect of policy. The need for a fund to support local communities, roll out local renewable energy schemes; fund restoration and rehabilitation of excavated areas; support Government savings from mineral revenues to ensure sustainable and stable future incomes; ease economic stress through stabilization; strengthen the nation's long term financial position; and finance expenditure on public pensions becomes important.

Additional objectives for Kenya's Sovereign Wealth Fund would appear to include supporting the fiscal budget through transfers to National Government budgets (with approval of Parliament) from Sovereign Wealth Fund investments (domestic and international).

These objectives are expected to change over time with the onset of sustained exploitation and production of natural resources from recent discoveries in Oil and Gas, Coal, Titanium, Soda Ash, Rare Earth Elements (REE) and other natural resources endowments.

In this respect, the report recommends the creation of a **Sovereign Wealth Fund** in anticipation of excess revenue from natural resources, one or more Sovereign Wealth Funds (SWF) funds through legislation by having a Sovereign Investment Authority Act.

f. Rationalized Legal Framework

This report recommends the enactment of a single overarching law, ***the Government Owned Entities Bill 2013***, governing national government owned entities as well as county corporations and agencies. With a limited number of exceptions, the Capital Markets Authority, State Corporations and a few others, it will supersede all current legislation governing GOEs; reduce the current burden of compliance with multiple laws and regulations; and include all subsidiaries of Government Owned Entities (GOEs).

It will repeal of all individual enabling legislations and recognize the unique characteristics of national state corporations, national state agencies, county corporations, and county agencies. The Act will provide for an institutional framework that promotes accountability, good corporate governance, and results orientation without stifling operational autonomy while operating within the requirements of the Constitution. The proposed legislation will address the duplication, conflicting provisions, different founding legislation, and sometimes-serious omissions.

g. Strengthening Corporate Governance

In order to strengthen corporate governance, the Government Investment Corporation will exercise ownership, investment and oversight roles for all state corporations on behalf of the National Government. All State Corporations shall have a governance framework hinged on the holding company to be incorporated by the Treasury and known as Government Investment Corporation (GIC).

It is also recommended in this report that the sizes of the Boards of Directors of the GIC and the State Corporations shall be restricted to seven (7) to nine (9) members including a non-Executive Chairperson. The Chairperson of the Board of GIC and the members thereof shall be appointed by the President and shall include the Principal Secretary to the National

Treasury who shall be appointed at all times by name with no provision for alternate representation.

In respect of State Corporations, the Board of GIC shall appoint the Chairperson and members of the Boards.

The authority to appoint the Chief Executive and top management shall be exclusively vested in the board of directors. In this connection the recruitment process will be done openly and competitively within a framework developed by GIC and in accordance with the Constitution. In execution of its mandates, the Board of Directors of GOEs will be responsible in determining the staffing levels, terms and conditions of service and other staff policy related matters within guidelines developed by GIC.

The remuneration policy and structure for Board members and staff of state corporations shall be regulated by GIC based on prevailing market conditions and in compliance with the constitution. GIC will also develop guidelines for award of incentives and rewards for exceptional performance in GOEs. In the case of GIC, the President shall provide guidelines upon which the Board of GIC shall determine remuneration of Board members and staff of the corporation.

All Board will members to serve for a three-year term renewable once. In respect of state agencies, this report recommends a reduction of government representation in the Boards to no more than two persons, one from the sector Ministry and the other from the National Treasury.

Chief Executive Officers will be appointed for four-year terms renewable once based on performance determined through transparent evaluation. The position of a Chief Executive officer shall only be advertised where the Board of Directors in consultation with GIC consider reappointment undesirable based on poor performance or gross misconduct

This report also recommends that an appropriate mix of skills for Board of Directors of the GIC and State Corporations be sought at all times across all functionalities for Board members. In addition, a qualified Company Secretary, being a member of the Institute of Certified Public Secretaries of Kenya, and in good standing should serve as the Board Secretary. Boards of state corporations must define the skills and competences required at any one time and to maintain a matrix of skills and competences required to guide future recruitment.

A Uniform Code of Governance and Leadership will be enshrined to provide a firm foundation for good corporate governance and be applicable across all GOEs. It will be based on the Constitution of Kenya 2010 including Articles 10 and 232. In addition it should adopt the King III Report on Corporate Governance (as modified by OECD guidelines). The toolkit for implementation comprises of:

- Code of Best Practice
- Board Charter
- Code of Conduct and Professional Ethics
- Board Work Plan
- Performance Evaluation Mechanism

It is recommended that professionals of good standing drawn from different fields prepare the code of governance. The code of governance should be subjected to stakeholder consultation before adoption. The National and County Agencies Oversight Office (NACAOO) will ensure that the code of governance is ready for approval by the cabinet in the very short term.

h. Performance Management

To facilitate a strong customer/client orientation in service delivery and drive performance to the next level, it is recommended that

- All Government Owned Entities (GOEs) should be on performance to enhance the gains already achieved;
- The GIC & NACAOO and the Vision Delivery Secretariat (VDS) should develop a performance management instrument focused on the National Key Result Areas (NKREA's) as well as Sector Performance Standards. Using the mission analysis approach, the instrument should prescribe the cascading mechanism at all levels and the performance collaboration relationship across the sector value chain. The instrument should also provide for intermediate variables that are measurable and are linked to the outcomes for the SOE;
- The Government Owned Entities should have defined linkages between their service charter and the performance contracts linked to their Key Result Areas (KRA's);
- The contracting principal should provide goals linked on the national goals.

<i>GIC</i>	<i>President</i>
<i>SC</i>	<i>GIC</i>
<i>NACAOO</i>	<i>President</i>
<i>State Agencies</i>	<i>Cabinet Secretaries</i>
<i>County Corporations</i>	<i>Governor</i>
<i>County Agencies</i>	<i>County Executive Member</i>

- These should include specific outputs and outcomes in the employment contracts of the corporation's chief executive officer & management. The evaluation and contracting shall be guided by the framework in Table 10.1.
- The rewards and sanctions should be agreed upon by the contracting principals and linked to the performance contract.
- Beyond ranking, the performance management needs to analyse the outputs of GOEs year on year focusing on the bottom line for state corporations and on Key Result Areas (KRA's) for the state agencies, county corporations and county agencies. The performance analysis should be undertaken by the governing body (GIC & NACAOO) providing a sector based dashboard on the GOE's performance.
- Each Government Owned Entity's performance should be benchmarked against a Domestic Reference Group and an International Reference Group. In addition, the oversight bodies should develop and operationalise a Government Owned Entities Corporate Governance Rating Index that will allow monitoring and evaluation of corporate governance that will allow comparison with domestic private sector as well as benchmark them globally;
- For all GOEs, the performance contracting cycle should be aligned to that of budgeting so that national priorities, policies and programmes are determined before the negotiation of performance contracts.
- Develop and operationalise a centralized repository to act as a single source of information on the performance of Government Owned entities, including institutionalized Sector Performance Standards to incentivize the imperative of collaboration amongst these entities and address the instinct towards territoriality in their operations.

The performance management system should be anchored in the overarching law to be developed and promulgated.

i. Alignment with the National Development Agenda

In order to ensure alignment of the activities of GOEs with the national development agenda, this report recommends that, in collaboration with all stakeholders actively drive the effort to ensure that there is a shared understanding of and commitment to the national development challenge as well as the expected role of the government owned entities in addressing these challenges. This will drive the process of keeping under continuous review the mandates and operational agendas of the various GOEs.

Further, proactive steps should be taken to build the capacity to develop and continuously review the overarching strategies in respect of government owned entities by adequately capacitating the responsible institutions, ensuring adequate collaboration between these entities and similar ones in benchmarked countries and with international bodies, and targeting capacity and capability development at the national and county levels.

This report also recommends that the current privatization programme be referred to the GIC which will determine how best to proceed with the programme. As far as is possible, there should be active efforts to grow the value of existing assets before disposal. The functions of the Privatization Commission will be transferred to the GIC. In addition, the proposed Government Investment Corporation be empowered to make Government investment decisions on portfolio basis and to hold the government shares in Government Linked Companies.

This report also recommends that the Government undertake a comprehensive review of the human capacity and capability gaps in all government owned entities, based on the minimum criteria and qualifications proposed in this report, and develop customized programmes to ramp up these capabilities, starting with those entities in the strategic sectors to the economy.

Critically, it is also recommended that the financial decision making capacity in the entities having oversight over government owned entities be strengthened, focusing on their ability to oversight application of public private partnerships, dealing with unfunded mandates as well as addressing alternative funding arrangements.

Table 12.1 details the recommendations made and how these respond to the terms of reference given to the taskforce.

Table 12.1: Summary of Recommendations and Implementation Roadmap

The President will establish an implementation Committee to facilitate, oversee and monitor implementation of the recommendations herein and liaise with various actors to ensure they have capacity to implement the recommendations. The Committee will include SCAC, Inspectorate of State Corporations, The National Treasury, AG, KIPPRA and Parliament.

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
Policy Direction on enabling environment	Recommendation 1 Create an enabling environment for GOEs to maximize their potential through:- - Re definition - Reclassification - New governance and oversight arrangement	1. Consider and Adopt Taskforce Report	President	December 2013
		2. Approve policy as Sessional Paper	President / Cabinet	December 2013
		3. Approve draft Bill on GOEs	Cabinet	December 2013
		4. Enact GOE Bill, 2013	Secretary to the Cabinet/AG Parliament	December 2013
		5. Incorporate GIC	The National Treasury and AG	December 2013
		6. Appoint Chair and Board of GIC	President	December 2013
		7. Appoint Director General of NACAOO	President	December 2013
		8. Establish NACAOO	President/Public Service Commission	December 2013
Institutional Framework for Government Owned Entities	Recommendation 2: Government Investment Company (GIC) shall establish SCs by incorporating them under the Companies Act	1. Transfer Government shareholding for SCs that are incorporated under the Companies Act CAP 486 (or its successor) to GIC	Cabinet The National Treasury/AG	June 2014
		2. SCs established under enabling legislation to be incorporated under the Companies Act. CAP 486 (or its successor)	Cabinet GIC	June 2014
	Recommendation 3 Develop guidelines for establishment and dissolution of State agencies, County Agencies and Corporations	1. Develop and issues guidelines in line with the GOE Act	NACAOO	June 2014
		2. Issue and disseminate the guidelines	NACAOO	June 2014
	Recommendation 4 Create an inventory of all physical assets of GOEs	1. Undertake a complete inventory of physical assets and liabilities of SCs	The National Treasury, GIC, TA	June 2014
		2. Undertake a complete inventory of physical assets and liabilities of SAs and CAs.	The National Treasury, NACAOO	June 2014
	Recommendation 5 Establish a Human Resource database for GOEs	1. Undertake an HR audit in all SCs	GIC	June 2014
		2. Undertake an HR audit in all SAs and CAs	NACAOO	June 2014
Governance of Government Owned Entities	Recommendation 6 Reconstitute the Boards of SCs and SAs in accordance with the GOE law	1. Undertake an Audit of the composition of the Boards	GIC, NACAOO GIC, CSs	January 2014
		2. Reconstitute the Boards	The President, CSs, GIC, NACAOO	January 2014
	Recommendation 7 Develop Remuneration, Incentives and Rewards policy and guidelines for GOEs	1. Policy and guidelines for GIC	The President	June 2014
		2. Policy and Guidelines for SCs	GIC	June 2014
		3. Policy and Guidelines for NACAOO	The President	June 2014
		4. Policy and Guidelines for SAs, CAs and CCs	NACAOO	June 2014
	Recommendation 8 Develop and issue Uniform Code of Governance and Leadership applicable to GOEs	1. Code of Governance developed based on the Kenya, Constitution, 2010, King III and OECD guidelines	NACAOO	June 2014

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
	Recommendation 9 Increase Funding of Research Institutions	1. Develop research funding policy	The national Treasury, NACAOO /CSs	June 2014
		2. Implement the policy strategies	NACAOO, CSs and SAs	June 2014
	Recommendation 10 Streamline Funding of Public Universities and Tertiary Institutions	1. Develop appropriate model for University funding based on outcomes instead of enrolment numbers.	NACAOO/CS Education	June 2014
Rationalization of Government Owned Entities (GOEs)	Recommendation 11 Reorganize the Sectors through Rationalisation and Consolidation.	Retain the Agriculture Fisheries and Food Authority (AFFA) as a regulator	Line Ministry / NACAOO, AG	June 2014
		Establish Crops Development and Promotion Service	President , AG	December 2013
		Reinstate the repealed Kenya Plant Health Inspectorate Service (KEPHIS) Act through Amendment of the AFFA Act before commencement slated for 22 January 2014	Line Ministry Cabinet AG Parliament	June 2014
		Repeal the establishment of the National Biosafety Authority from National Bio-Safety Act 2009, and transfer the functions of the National Bio-Safety Authority to the reinstated KEPHIS as the larger entity with more capacity	Line Ministry Cabinet AG Parliament	June 2014
		Reinstate the mandate of National Irrigation Board (NIB) and divest it of its regulatory functions	Line Ministry AG NACAOO	June 2014
		Restrict the mandate of Kenya Agricultural and Livestock Research Organization to agricultural research development by amending the KALRO Act	Line Ministry Cabinet NACAOO AG	June 2014
		Amend the KALRO Act to remove research in forestry, marine and fisheries.	Line Ministry Cabinet NACAOO AG	June 2014
		Establish the Kenya Forestry Research Institute and Kenya Marine and Fisheries Research Institutes (KEMFRI) through legal notice	Line Ministry Cabinet NACAOO AG	June 2014
		Establish the Livestock Regulatory Authority for livestock subsector, including dairy industry, through legal notice	Line Ministry Cabinet NACAOO AG	December 2013
		Establish the National Livestock Development and Promotion Service as a separate body responsible for livestock development and promotion	Line Ministry Cabinet NACAOO AG	December 2013
		Transfer the Coffee Development Fund to the Kenya Development Bank (KDB)	Line Ministry Cabinet NACAOO AG	December 2013

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
		Transfer the residual Nyayo Tea Zones Development Corporation to GIC; having transferred and merged its forestry conservation functions with those of wildlife, forestry and water catchment conservation	Line Ministry Cabinet NACAOO AG	December 2013
		Restructure the NCPB to remove the Strategic Grain Reserve and transfer the commercial function to GIC	Line Ministry Cabinet NACAOO AG	December 2013
		The National and County Governments to hold further consultations to determine the future of Water Service Boards	Line Ministry Cabinet NACAOO AG	December 2013
		Transfer National Water Conservation and Pipeline Corporation to GIC, to decide its future	Line Ministry The National Treasury Cabinet GIC AG	December 2013
		Merge Kenya Forest Service, Kenya Wildlife Service, Kenya Water Towers Agency and conservation functions of the Nyayo Tea Zones Development Corporation	Line Ministries Cabinet NACAOO AG	December 2013
		Transfer the functions of South-South Centre to the Ministry of Devolution and Planning	Line Ministry Cabinet NACAOO AG	December 2013
		Establish the <i>Financial Supervisory Council</i> by merging Capital Markets Authority (CMA), Insurance Regulatory Authority (IRA), Retirement Benefits Authority (RBA) and Sacco Societies Regulatory Authority (SASRA)	Line Ministry Cabinet The National Treasury NACAOO AG	December 2013
		Complete winding up of Kenya National Assurance Company (2001) by 31 December 2013	Line Ministry Cabinet NACAOO AG	December 2013
		Rename KRA to <i>Internal Revenue Service (IRS)</i> and transfer Customs Dept. to Kenya Citizens and Foreign Nationals Management Service , creating <i>Customs, Border Management and Security Service</i>	Line Ministry Cabinet AG	June 2014
		Establish the Kenya Development Bank (KDB) by merging Kenya Industrial Estates (KIE), IDB Capital, Industrial and Commercial Development Corporation (ICDC), Agricultural Finance Corporation (AFC), and	Line Ministries The National Treasury	June 2014

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
		Tourism Finance Corporation	Cabinet NACAOO AG	
		Create the Kenya Export-Import Bank (Kenya EXIMBANK)	Line Ministry Cabinet The National Treasury NACAOO AG	June 2014
		Establish the Kenya Investment Corporation (KIC) by merging Export Promotion Council (EPC) , Kenya Investment Authority (KenInvest) , Kenya Tourist Board (KTB) , and Brand Kenya Board (BKB)	Line Ministry The National Treasury Cabinet NACAOO AG	June 2014
		Establish Biashara Kenya by merging Micro and Small Enterprises Authority created under the SME Act, Youth Enterprises Development Fund (YEDF) , Women Enterprise Fund (WEF) , the SME Fund , the Uwezo Fund and related funds, initiates and programs	Line Ministry The National Treasury Cabinet NACAOO AG	June 2014
		Transfer the functions of the Privatization Commission to GIC	Cabinet GIC AG	December 2013
		Grant Financing Reporting Centre (FRC) independence from the GOE governance oversight framework	The President Cabinet The national Treasury AG	June 2014
		Transfer the functions of the Tourism Research Institute to the Kenya Utalii College	Line Ministry Cabinet NACAOO AG	June 2014
		Merge Tourism Finance Corporation into the Kenya Development Bank (KDB)	Line Ministry Cabinet The National Treasury NACAOO AG	December 2013
		Rename Kenya Film Commission (KFC) to Kenya Film Development Service and transfer regulatory functions to Kenya Film Classification Board	Line Ministry Cabinet NACAOO AG	December 2013
		Transform the Higher Education Loans Board (HELB) into an educational DFI for financing higher education with the interest on loans retained at current levels and reviews approved by Cabinet.	Line Ministry The National Treasury Cabinet NACAOO	December 2013

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
			AG	
		Transfer the Kenya Pipeline Company (KPC) to GIC	Line Ministry Cabinet GIC AG	December 2013
		Strengthen NOCK to be able to play active roles in both upstream and downstream segments of the market in the manner of PETRONAS (Malaysia)	Line Ministry Cabinet GIC AG	December 2013
		Operate National Hospital Insurance Fund (NHIF) as a standard medical insurance scheme under the Insurance Act	Line Ministry Cabinet NACAOO AG	December 2013
		Establish <i>Health Services Regulatory Agency</i> as regulator for the sector	Line Ministry Cabinet NACAOO AG	June 2014
		Establish a regulatory body for the mining sector	Line Ministry Cabinet NACAOO AG	June 2014
		Bring NSSF Board of Trustees into compliance with RBA Act with immediate effect	Line Ministry The National Treasury Cabinet NACAOO AG	December 2013
		Transfer the functions of the National Social Security Assistance Authority to be undertaken by the mainstream Ministry of Devolution and Planning	Line Ministries The National Treasury Cabinet NACAOO AG	December 2013
		Turn Local Authorities Provident Fund (LAPF) into a pension scheme for County Government employees	Line Ministry The National Treasury County Treasuries Cabinet AG	June 2014
		Government will hold further deliberations to determine the future of Kenya Rural Roads Authority and Kenya Urban Roads Authority	Line Ministry The National Treasury Cabinet NACAOO AG	June 2014

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
		Rename the National Transport and Safety Authority as National Land Transport and Safety Agency , with economic and safety regulation of rail transport added to its mandate	Line Ministry Cabinet NACAOO AG	December 2013
		Keep the National Construction Authority (NCA) and National Housing Corporation (NHC) , but determine the future of NHC's subsidiary, Research Development Unit (RDU) Ltd	Line Ministry NACAOO AG	December 2013
		The National and County Governments to hold further consultations to determine the future of Regional Development Authorities (RDAs) as prospective joint authorities	Line Ministry The National Treasury Governors Cabinet NACAOO AG	June 2014
		Operationalise the <i>Kenya Citizens and Foreign Nationals Management Service</i> as an Executive Agency, and move the customs function from KRA to it	Line Ministry The National Treasury Cabinet NACAOO AG	December 2013
		Merge Kenya Copyright Board (KECOBO) , Kenya Industrial Property Institute (KIPI) and Anti-Counterfeit Agency (ACA)	Line Ministry Cabinet NACAOO AG	December 2013
		Transfer functions of the Kenya Yearbook Editorial Board to the National Museums of Kenya	Line Ministry Cabinet NACAOO AG	December 2013
		The National and County Governments to hold further consultations to determine the future of Kenya National Library Service	Line Ministry The National Treasury Cabinet NACAOO AG	June 2014
		Domicile LAPSSET Corridor Development Authority in the Executive Office of the President	Line Ministries The National Treasury Cabinet NACAOO AG	December 2013
Sovereign Wealth Fund	Recommendation 12 Establish a Commodity Sovereign Wealth Fund	Consider and Approve Policy for establishment of Kenya Sovereign Wealth Fund (SWF)	President	December 2013
		Approve and Enact legislation for Kenya Sovereign Wealth Fund (SWF)	Cabinet	December 2013
		Incorporate SWF as limited liability company under Companies Act	The National Treasury	December 2013

Policy Issue	Recommendation	Required Actions	Responsibility	Timelines
		Appoint and Operationalise SWF Advisory Council	President	December 2013
		Appoint and Operationalise SWF Board	President	December 2013
		Capitalise SWF with Initial capital of KES10bn	President The SWF Advisory Council SWF Board The National Treasury	June 2014
Strengthening Performance Management for Service Delivery	Recommendation 13 Institute Performance Management for Efficient and Effective Public Service Delivery	Develop a performance management instrument(s) focused on the National Key Result Areas (NKREA's) including benchmarking GOEs against Sector Performance Standards, Governance/Ratings Indices, as well as <i>domestic and International Peer Reference Groups</i>	Cabinet Line Ministry NACAOO GIC	June 2014
		Develop Rewards and sanctions policy linked to <i>Performance Contracts for SCs</i>	Cabinet Line Ministry GIC	June 2014
		Develop Rewards and sanctions policy linked to <i>Performance Contracts for SAs, CAs and CCs</i>	Line Ministry, Cabinet NACAOO	June 2014
		Prepare and provide appropriate sector-based Dashboards on the GOE's performance	GIC NACAOO	June 2014
		Develop a centralized repository to act as a single source of information on the GOEs	NACAOO GIC	June 2014
Reviewing the Procurement and Disposal Framework for GOEs	Recommendation 14 The Taskforce therefore recommends that the existing Public Procurement and Disposal Framework be urgently reviewed and reformed to adhere to the provisions of Article 227 of the Constitution of Kenya 2010 and at the same time ensure that State Corporations are freed from restrictive provisions that would hinder their ability to compete effectively in their various spaces.	Develop and adopt a Long Term Policy Framework for Public Procurement in Kenya sensitive to the needs of the Constitution of Kenya 2010 and the State Corporations	President The National Treasury PPOA	June 2014
		Review the Procurement Laws and Regulations to align to new Policy Framework	President The National Treasury PPOA	June 2014
		Enact new Procurement Laws and Regulations to free State Corporations from restrictive procurement laws and regulations	President The National Treasury Cabinet PPOA AG	June 2014
Reorienting State Oversight Capacity and Capability	Recommendation 15 Ensure a shared understanding and commitment to the National Development Agenda between Government and all stakeholders.	Develop and implement a robust communication and Engagement strategy for the transformation of the State Corporations and Agencies	Cabinet NACAOO GIC	December 2013
		Implement a Change Management Strategy	NACAOO GIC	June 2014

Implementation of these recommendations in respect of government owned entities (GOEs) will be geared to achieve big results, quickly in a manner to secure the envisaged transformation, both in the way government conducts business, but also in respect of the structure and performance of the economy. Therefore, immediately this report is handed over to H.E. The President, there should be a discussion to quickly implement the recommendations contained herein.

Implications of the Transformation Agenda

It is expected that implementation of the thirty-six (36) recommendations will yield activity in respect of reviews in existing policies and legislation to support the rationalization of government owned entities as proposed.

Table 12.2: Proposed Laws for Review

Class of Government Owned Entity	Total Number of Legislation	Nature of Review
State Corporation (purely commercial)	25	<ul style="list-style-type: none"> Amendment of legislation required to reconstitute State Corporations established under various enabling legislation from statutory bodies into public limited companies Amendment of legislation required to incorporate corporate governance requirements recommended in the proposed policy and State and County Corporations Bill 2013. Amendment of legislation required to streamline reporting mechanisms by State Corporations (purely commercial) and (strategic) to the Government Investment Corporation Amendment of legislation required to streamline financing procedures and processes of GIC as a super State Corporation Amendment of legislation required to remove redundant provisions such as Government Owned Entities reporting to the line Ministries Amendment of financial processes of State Corporations including in the Public Financial Management Act (purely commercial to incorporate the mandate of the Sovereign wealth Fund)
State Corporation (strategic commercial)	22	<ul style="list-style-type: none"> Amendment of legislation to rationalize the mandate of Government Owned Entities to: Align then to the corporate governance regime provided in the proposed policy and State and County Corporations Bill 2013. Remove duplication and overlaps in various entities Ensure an appropriate balance between commercial orientation and service delivery in accordance with Article 46 of the Constitution Harmonize county government and national government functions in line with the proposed policy and State and County Corporations Bill 2013. Synchronize size of Boards; framework for recruitment, selection process for board members; appointment procedures; induction processes for board members; proper skills mix and bloated boards; the process of appointment of CEOs; and the role of boards with the overarching law
State Agencies (Executive agencies)	92	<ul style="list-style-type: none"> Amendment of legislation to remove regulatory functions from other Government Owned Entities and transfer them to Regulatory bodies Amendment of legislation to ensure executive agencies mandate remains purely service delivery institutions Amendment of legislation to transfer overlapping and duplicated mandates from other Government Owned Entities to the relevant bodies Amendment of legislation to provide for special matters for technical institutions Repeal all existing enabling statutes of State Corporations to reflect the recommendations in the proposed policy and State and County Corporations Bill 2013 including dissolved State Corporations, newly established State Corporations and State Agencies, and Amendment of legislation to establish merged Government Owned Entities in line with the classification recommended in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to reconstitute some Government Owned Entities as joint National Government and County Government or joint County Government authorities in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013
State Agencies (Regulatory)	34	<ul style="list-style-type: none"> Amendment of legislation to separate regulatory functions by transferring implementation/promotional functions to the relevant executive agencies in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Ensure that each sector has only one Regulator in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to establish regulatory bodies for each sector where there are none e.g. Livestock sector in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013

Class of Government Owned Entity	Total Number of Legislation	Nature of Review
State Agencies (Research, public universities, tertiary education and training institutions)	50	<ul style="list-style-type: none"> Amendment of legislation to review size of Boards in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to provide for close coordination between Public Universities and Research institutions in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to provide for how research work is going to feed into the other sectors to ensure innovation and contribution to National development in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to ensure there is existence of medium technical training as well top level institutions in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013 Amendment of legislation to link specialist research and training institutions to the service and regulatory institutions in the same sector in accordance with the recommendation in the proposed policy and State and County Corporations Bill 2013

It is recommended that a legal team including SCAC Secretariat and the Kenya Law Reform Commission be constituted to undertake the review within a period of 3-6 Months. The team will be required to prepare a Miscellaneous Amendment Bill to amend the relevant legislation.

In addition, it is also recommended that an overarching communication and engagement strategy be put in place to support rapid delivery of the recommendations. It would be critical to implement some of the low-lying fruits as a means to creating momentum behind the report and secure the transformation effort. Further, steps to secure culture change through a change management effort will be a supplemental instrument for this work. These steps will be critical in anticipating and mitigating the political, economic, social and institutional risks that will emerge as this transformational effort is being implemented.

Conclusion

These recommendations will facilitate the repositioning, rationalization, and consolidation of Government Owned Entities in a manner that will ensure that they are aligned to the national development agenda. In addition, by driving a focus on responsive service delivery supported by strengthened corporate governance, these measures will unlock the value inherent in Government Owned Entities, by increasing the wealth generated by these entities, but also addressing critical social needs supportive for a sustainable wealth creation process. In this manner, the report exports stronger and better performing GOEs, acutely attuned to strengthening their contribution to the transformation of the Kenyan nation and hasten achievement of Kenya Vision 2030.

One of the key challenges that the taskforce faced was the acquisition of good data in respect of the number of Government Owned Entities as well as that related to their performance. Recognising that these entities will play a significant role in Kenya's transformation agenda articulated in Kenya Vision 2030, the taskforce recommended that within six (6) months, a detailed and comprehensive database on the operational and financial performance of all GOEs be established by the National Treasury and be availed to the proposed GIC and NACAOO.

It was noted during the review that there exist a raft of other institutions namely semi-autonomous government agencies (SAGAs); statutory boards and tribunals that impinged on the work of the taskforce, but were outside its terms of reference.

In respect of tribunals, it is the taskforce's recommendation that these be rationalized to ensure that mandate conflicts are addressed and to ensure accountability.

Regarding SAGAs and Statutory Boards, the taskforce noted that this over time have presented opportunities for the proliferation of GOEs. This avenue needs to be sealed by requiring that establishment of such entities follow the laid down procedure as recommended in this report.

CHAPTER THIRTEEN

TRANSITIONAL PROVISIONS

Incorporation of GIC

Upon adoption of The Policy by Government, the National Treasury will immediately incorporate GIC. Thereafter the National Treasury shall transfer its ownership role in all State Corporations and Government Linked Corporations to the GIC. All Assets and Liabilities of the current Privatization Commission shall be assumed to be Assets and Liabilities of GIC. However, staff of the commission shall only be absorbed by GIC subject to suitability.

Establishment of NACAOO

Upon adoption of the Policy by Government, the President will establish NACAOO as an office in the Public Service. All Assets and Liabilities currently managed under the State Corporations Advisory Committee and the Inspectorate of State Corporations shall be deemed to be Assets and liabilities of NACAOO. However, staff of the two institutions shall remain Employees of the Civil Service Pending suitability assessment to join NACAOO

Merger of State Agencies

A number of existing State Agencies have been merged. Upon commencement of the Government Owned Entities Act, the respective Cabinet Secretary shall, in liaison with NACAOO, operationalise the merged State Agencies by:

- i. causing a legal notice to be issued by the President establishing the new Government Owned Entity arising from the merger
- ii. having a Board of Directors for the new GOE appointed
- iii. dissolving the previous Boards of the merged State Agencies and revoking any appointments thereof
- iv. integrating the merged State Agencies as Directorates of the new Government Owned Entity.
- v. repealing or amending the enabling legislations of the merged State Agencies

Chief Executive Officers' of Merged State Agencies

The Chief Executive Officers' of the State Agencies to be merged shall move to the new Government Owned Entity as Heads of their Directorates (former State Agency). They will however be only allowed to serve for their unexpired term subject to a maximum period of six (6) months. Thereafter, their contracts shall be determined.

Staff Serving in Merged State Agencies

All the staff serving in State Agencies being merged shall be presumed to be staff of the new GOE. The Board of the new GOE and the respective Cabinet Secretary shall, in consultation with NACAOO, undertake staff placement in the developed organizational and staff establishment structures. Any staff found not fitting in the establishment structure may be redeployed elsewhere in the public service or be off-loaded in the normal manner.

Boards of Retained State Agencies

The serving Directors/Board members of retained State Agencies shall be retained to serve:

- i. for the remainder of the unexpired term if they fully meet the minimum qualifications for Board members of GOEs spelt out in the policy and have served for not more than two terms.

- ii. their unexpired term upto a maximum period of three (3) months in case they don't fully meet the requirements for Board members stipulated in the policy or in cases where the Director/Board member has served for more than two terms.

Chief Executive Officers of Retained State Agencies

Chief Executive Officers of State Agencies to be retained shall be:-

- i. allowed to serve the unexpired term subject to performance and fully meeting the requirements for appointment to CEOs as stipulated in the policy.
- ii. allowed to serve the unexpired term upto a maximum period of six months in cases where the requirements for appointment to CEOs as stipulated in the policy are not fully met or if their performance is assessed to be below par.

No new contract of service shall be offered to a CEO who has served in the same State Agency for two terms.

State Agencies with Functions to Ministries

All staff's serving in State Agencies whose functions have been transferred to Ministries shall be deemed to be transferred to the Public Service Commission for appropriate deployment or otherwise.

The enabling legislations of the State Agencies whose functions have been transferred to Ministries shall be repealed.

State Agencies Whose Functions Have Been Devolved

The policy has recommended discussions between the National Government and County Governments regarding the future of the State Agencies whose functions have been devolved. It is expected that those discussions will herald appropriate decisions on the way forward for those Agencies.

State Corporations

GIC, once incorporated by the National Treasury and operationalized, will determine the management and operational issues in the State Corporations

New State Agencies

New Government Owned Entities have been created by the policy. Upon enactment of the GOE Act, the respective Cabinet Secretary shall, in consultation with NACAOO, develop necessary legal instruments (Legal Notices) for gazettelement by the President.

Implementation of the Policy Recommendations

Implementation of the various policy provisions shall be systematically sequenced and undertaken in an accountable manner as reflected in the implementation matrix in Chapter 12

PART 6: APPENDICES

Appendices

Appendix 1 – Summary of Stakeholder Views and Proposals for Policy on State Corporations in 2009

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
Establishment of State Corporations	The number of State Corporations keeps on growing to unmanageable level compared to the size of the economy.	Corporations with duplicating, overlapping and competing mandates are established resulting in wastage of public resources and increasing burden on exchequer	State Corporations to be established after consultations required by the law and after feasibility studies.
	Obsolete/ irrelevant mandates	Retention of State Corporations whose Mandates are either obsolete or irrelevant, which enhances drain on the exchequer and distorts the environment due to duplication of functions either with the Government or private sector.	Examine mandates of existing State Corporations to determine relevance. Dissolve irrelevant State Corporations. Merge those duplicating mandates or whose mandates overlap.
Legal Framework	Control nature of the State Corporations Act Cap 446.	Heavy control has a stifling impact on State Corporations especially commercial ones which must compete in their industry.	Free Commercial State Corporations from controls imposed by the State Corporations Act, thereby granting them freedom of commercial enterprises.
		There was also the issue of whether it was possible to manage the different types of State Corporations under the same omnibus law, namely the State Corporations Act.	Have different frameworks for different classes of state corporations.
		Poor Performance of the State Corporations' Sector as a result of an over-controlled environment that stifles flexibility and innovativeness.	Review the legal framework to create space for managerial innovativeness and flexibility.
	Many controlling/oversight agents are created by the State Corporations Act.	Institutions with overlapping functions, numerous approval and consultation requirements creating conflicts with enabling legal instruments and lengthy bureaucracy	Review the legal framework to smooth out the conflicts and rationalize roles of various institutions currently involved
	Public Procurement and Disposal Act 2005	Lengthy and rigid procurement requirements that are not business friendly and on which the Board has no oversight.	Free commercial State corporations from requirements of the Public Procurement and Disposal Act.
Institutional and Administrative Framework	Crippling bureaucracy	Poor performance of the State Corporations Sector	Rationalize the administrative framework
	Capacity and the role of SCAC	There are no guidelines for direct engagement between SCAC and State Corporations.	Provide for direct engagement between SCAC and state Corporations.
		SCAC has no teeth to enforce compliance with its advice and the law. Its advice can be taken or rejected	Consider transforming SCAC into a Commission
	The role of Inspector -General (Corporations)	It is not possible for the Inspector – General (Corporations) to give independent audit when he or his officers attend Board meetings. An oversight institution cannot be co-opted into a Board without risk of conflict of interest.	Review the role of the Inspector-General (Corporations) in Board meetings.
	Role of Parent Ministry	Micromanagement by the parent Ministry which stifles initiative and accountability.	Redefine the role of the parent Ministry.
	Role of Permanent Secretaries in the Board	In the current set up a Permanent Secretary has the role of a Board member, supervisor and operator all at the same time, which presents	Harmonize the role of the Permanent Secretary.

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
		conflict of interest.	
	Categorization of State Corporations	The rationale for categorization is unclear yet it determines remuneration and ability of Corporations to attract and retain quality staff. Corporations with different mandates are in some cases lumped together.	Have clear rationale for categorization of State Corporations and delink pay from categorization.
	Conflicting roles and responsibilities	The State Corporations Act and legal instruments establishing State Corporations contain conflicting provisions relating to responsibilities and powers of the President, Responsible Minister, Responsible Permanent Secretary, the Board and the management.	Harmonize the legal instruments to minimize opportunities for conflicts.
	Multiple reporting requirements	State Corporations report to the Parent Ministry, Treasury, Office of the President, Inspectorate of State Corporations, and Performance Contracting Secretariat which makes good governance practice difficult. There are too many principals to report to.	Define the roles of Ministries, Boards, Management, Treasury, SCAC, and Inspectorate to remove vagueness which causes conflicts.
	Crowded relationships	The institutional framework created legally and administratively is cloudy, misty and foggy in terms of relationships between CEO, Board, PS, and the Minister. The relationship puts the Board and management in governance problems. Channels of communication are not clear.	Define the roles of Ministries, Boards, Management, Treasury, SCAC, Inspectorate to remove vagueness which causes conflicts.
	Numerous controlling/oversight institutions	State Corporations are subjected to numerous controlling and oversight institutions that include Inspectorate of state Corporations, Efficiency Monitoring Unit, Kenya Anti-Corruption Commission, Kenya National Audit Office, Public Procurement Oversight Authority, SCAC, Parent Ministry, Treasury, Performance Contracting Secretariat, and Ministry of State for Public Service whose roles dampen responsibilities of the Board, create overlaps, conflict and confusion, and is wasteful of government resources.	Review the roles and relevance of the control/oversight institutions.
Financial Issues	Poor financial performance	Lack of sound management practices and professionalism, inadequate skills and competencies, lack of competitive culture and shared vision. Poor accountability structures. Incompetent Boards and management, undercapitalization, weak control systems, unethical organizational culture, over-controlled environment, inadequate adoption and application of technology, political interference, corruption and impunity.	Enhancement of good corporate governance, include competitive sourcing of Board members and management staff, enforcement of the Public Officers Ethics Act, review procedures to reduce red tape and control, adopt needs based budgeting, and enhanced good governance at state level.
	Inadequate funding	State Corporations that depend on the exchequer do not get adequate budgetary support to enable them deliver their mandate. At times they are reduced to payment of salaries	Rationalize financing of State Corporations.
	Poor performance of State Corporations	1. Legal framework and the resultant environment affects performance of State Corporations especially commercial ones. Only the natural monopolies like KPC where oil must flow, KPA where ships must dock, KenGen and others that can make profit as they have no competition. 2.Appointment of non-commercial oriented directors also affects performance. 3. Very little can be achieved as long as the appointments remain political. Once appointed politically, director's loyalty is to the appointing authority and not to the corporation.	1. There is a need to create a business friendly legal framework. Commercial State Corporations cannot operate profitably under the State Corporations Act and the Public Procurement and Disposal Act, 2005. 2. Commercial State Corporations should have commercial Boards. For commercial entities, the Government could consider appointing independent directors instead of having Permanent Secretaries and public officers on the Board

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
	Funding of the Sector	Delayed disbursement of funds allocated to State Corporations by the Treasury.	Review the framework so that Treasury can disburse allocated funds directly to State Corporations.
Governance Issues	Board Appointments	Appointments to the Boards are political and do not adequately consider the mix of skills required in the stewardship of State Corporations.	1. Appointment to State Corporations' Boards should be informed by the skills necessary for the effective functioning of a Board in view of the mandate of the corporation. 2. Establish criteria for appointment. 3. People eligible for appointment to apply for consideration. 4. Designate an institution to deal with applications and development of data bank for eligible persons. 5. Treasury to participate in the appointment of directors.
	Tenure of service	Under the current arrangement Chairmen and Board members are appointed for a renewable term of three years. While there is no limit as to the number of renewals, the three year period is too short for a Board to effect meaningful contribution to the success of a State Corporation.	1. Chairmen and Board members should be appointed for a five year term renewable once subject to performance. 2. A letter of appointment to be issued to persons appointed to the Board showing the term and to include an exit clause on account of performance.
	Number of Boards where one can be appointed at any one time	There are persons who are appointed to more than one Board at any one time	An individual should not be appointed to more than two Boards at any one time for effectiveness
	Size of the Boards	Under the current arrangement the size of the Board ranges from 6 to over 30 members. A large Board impacts negatively on financial and other resources of the Corporation and makes Board functions ineffective.	The appropriate size of the Boards should be 7 to 11 members including chairmen and public officers. In exceptional cases the number can be 13 depending on functions of the Corporation.
	Absence of minimum qualifications for Board members	There is no minimum qualification requirement for being appointed to a Board of a State Corporation and consequently there are cases where functional illiterates are appointed as Board members.	The minimum requirement for appointment should be a degree level of education, relevant experience, competence and knowledge in the technical aspects of the Corporation.
	Integrity and probity of Board members	There is no mechanism for identifying and vetting persons to be appointed to the Boards. Consequently, persons of questionable integrity and moral backgrounds end up on the Boards.	The Government should designate a body that will be responsible for identifying persons who are proper and fit for appointment as members of State Corporations Boards. Such a Body will scout and have a data bank for suitable candidates, taking into account probity, integrity and experience into account.
	Ineffective Boards	Poor performance as responsible Boards are not in a position to provide strategic leadership to the corporation. Ineffective Boards are also not able to supervise and oversee management.	Appoint boards that are fit for purpose.
	Structure of the Board	There are too many Civil Servants interested in attending board meetings even when they are not gazetted as members of the Board. Example given of the Attorney General and the Inspector-General (Corporations) who attend meetings of State Corporations' Boards and tend to be domineering when in fact they are not accountable for management of State Corporations.	There is need to reduce Civil Servants in the Boards. Remove Civil servants who are not gazetted as directors from the Board
	Retirement of Board members or retirement at once losing corporate memory	Collapse of institutional memory. There is no continuity as the new Board takes time to learn. In some cases, corporations stay for long periods of time without a Board.	Ensure staggered appointment of Boards which ensures rotational retirement. Exercise restraint in removal of Boards midstream and follow correct procedures.

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
	Abrupt removal of Boards before end of term	Corporate instability arising from sudden change of Boards midstream on the basis of political expediency. Incoming Boards have to spend time learning causing lags in programme implementation.	Provide autonomy of Boards and security of tenure, subject to performance, and provide clear mechanisms for removal of non-performing Boards.
		Whenever Boards are removed, civil servants who sit on the Board are left to continue with the new board members.	When a Board is removed, even civil servants who sat in it should be removed as they are also part of the problem. Problems should not be wholly apportioned to directors from outside the public service.
	Board Committees	There are Boards that have up to 9 committees, which increases Board expenses and increase demand on management's time in servicing the Board.	Reduce number of Board Committees to a maximum of four.
	Audit Committees	There are some Corporations that had not established Audit Committees. There were also cases where Audit Committees rarely met except to review financial issue.	Boards to establish Audit Committees and develop a charter for its operation
	Inadequate governance structures	In some corporations Audit Committees rarely meet except when reviewing financial reports. Internal Audit units which support Audit Committees are also weak.	Boards to establish Audit Committees as required by the Treasury and to strengthen, professionalize and empower Internal Audit.
	Frequency of Board meetings	Some State Corporations Boards hold meetings too frequently, leaving management little time to address operations. Directorship is viewed as employment whose payment is the allowances payable and hence the drive for numerous meetings.	Appoint right people to the Boards and review the structure of remuneration of Board members Boards to develop charters and guidelines on how to operate.
	Responsibilities of Board members	In some cases Board members are not clear about their role and responsibility and therefore tend to encroach on the day to day management, a function of the executive management or to micro manage. Even where Boards have undergone training in corporate governance, the principles of corporate governance are not applied.	Board members should be inducted on their responsibilities immediately they are appointed. Penalties should be brought to bear where there is breach of duty or trust to break impunity.
	Lack of clarity on responsibilities of the Board	Responsibilities of the Board are not clearly defined. The legal instruments governing State Corporations do not make adequate provisions on responsibilities. There are also conflicts between various laws governing the Sector with regard to responsibilities of the Board.	Harmonize all laws governing the Sector. Entrench Good Corporate Governance concepts in law and adhere to best practices.
	Remuneration of Board members	Remuneration of Board members is inadequate relative to the responsibility and liabilities of the Boards. Limiting remuneration to sitting allowances leads board members to ask for numerous meetings. Some State Corporations were paying allowances and retainers that were not provided for in the Guidelines.	There is need to review remuneration of Board members and to consider payment of a retainer and directors fees, which should be earned. This should go together with appointing right people to the boards and paying them well.
	Board evaluation	Although good corporate governance requires that Boards of directors evaluate themselves, Boards of State Corporations have not embraced the practice	Boards of state Corporations should be required to evaluate their own performance.
	Heavy regulatory and control regime	The authority and responsibility of the board is crowded by various oversight agencies, making it difficult for the Board to know when and over what it is in control.	Examine and redefine the role of the existing institutional and regulatory framework with a view to eliminating and or merging roles.
	Accountability for Permanent	Permanent Secretaries, their alternates and other Public Officers on the	All Board members including public officers and alternates to Permanent

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
	Secretaries/Accounting Officers and other public officers	Boards are not held accountable for Board decisions when things go wrong but are rewarded when performance is good.	Secretaries should be held accountable for Board decisions.
	Interference by parent ministries	Due to over regulation and rigid control, there is no clear boundary between the Ministry and the State Corporation.	There is a need for Permanent Secretaries/ Accounting Officers to cede some powers if the Sector were to perform effectively. The multiple requirements for approvals and authorizations cause unnecessary bureaucracy.
	Residual powers of the Minister	Problems of State Corporations originate from parent ministries due to residual powers of the Minister and the undefined powers of the Permanent Secretary who can issue directions and overturn decisions of the Board. There is no commitment to good corporate governance at the top where the tone is set.	Train Ministers and Permanent Secretaries/Accounting Officers in good corporate governance. Integrity at the Ministry level will replicate at the State Corporation level.
	Political influence	Appointment of CEOs and Boards are sometimes political. CEOs and Boards feel a hand over their heads and pressure to toe the political line.	Depoliticize appointments to management positions in State Corporations and the Boards.
		There are many political interests despite responsibilities of the Board. Politicians are interested in State Corporations because they view them as cash cows and employment outlets for their supporters. If the Board stops the milking and employment it is removed the following day.	Ministers and Permanent Secretaries/Accounting Officers should be inducted in good corporate governance. Commitment to good corporate governance should be from top to bottom. The idea that “ <i>mali ya serikali</i> ” belongs to people in positions of authority to do what they want with it should cease.
	Political patronage	Employment of unqualified staff that become untouchable, loyalty owed to the politician not the corporation, impunity, corruption.	Professionalize management of State Corporations from recruitment, selection, appointment, promotion to separation.
	Role of Permanent Secretary/Accounting Officer or their Alternate on the board	Alternate to permanent secretaries on the Boards are not adequately delegated to represent the Accounting Officers. If they were, then the Accounting Officers would have no reason for overturning decisions of the Board in which they are represented.	Permanent Secretaries should delegate responsibility for decision making on the Board to a senior officer and be bound by decisions of the Board, whether they attend Board meetings or not.
	Inconsistent representation of Permanent Secretaries/Accounting Officers.	Alternates of the Accounting Officers on the Boards are not consistent. Boards have to contend with different persons who at times do not even understand the Corporation and have to be educated.	Alternates to the Permanent Secretaries should be nominated in writing, should attend Board meetings in person and consistently.
	Participation of Permanent Secretaries/ Accounting Officers in Board meetings.	Permanent Secretaries/ Accounting Officers on the Board exercise undue influence over the Board in decision-making yet they are not held accountable for outcomes.	The Permanent Secretary attending a Board meeting should be under the control of the Chairman. Since this may not work the PS should therefore not attend Board meetings in person, but send a qualified alternate who attends the meetings consistently.
Management Issues	Quality management and risk management	Internal Audit function responsible for quality and risk management is in most cases reduced to financial audit carried out by junior officer best suitable for clerical work.	Strengthen Internal Audit function in State Corporations so as to empower it execute quality and risk management function as is the case in the private sector.
	Appointment of Chief Executive Officers	Boards do not appoint Chief Executive Officers of State Corporations which makes it difficult for the Boards to remove them for poor performance.	Review the legal framework and the Guidelines to empower the Board to appoint Chief Executive Officers and to demand accountability from Chief Executive Officers
	Breach of Guidelines on recruitment of Chief Executive Officers	There are cases where parent ministries have appointed Chief Executive Officers directly without involving the Board in recruitment as required by existing Guidelines. Where this has happened the Government has not taken corrective action thus setting precedent, while rendering the Board	Establish and enforce penalties for breach of Guidelines in the management of the State Corporations Sector. Empower the State Corporations Advisory Committee to enforce compliance.

ISSUE	PARTICIPANTS AREAS OF CONCERN	EFFECT OF THE PROBLEM	SUGGESTED REFORMS
		powerless in controlling the CEO.	
	Performance contracting	Performance Contracting Secretariat has in some cases been changing targets negotiated with Adhoc Negotiating Committee and agreed with Parent Ministries, sometimes imposing targets outside mandates of State Corporations. This results in poor performance as such targets cannot be pursued.	Performance contracting Secretariat to respect targets freely negotiated and agreed with Parent Ministries.
		There are no rewards for achievement of agreed targets particularly in the case of State Corporations that do not generate income	Reward achievement of targets and sanction poor performance
	Staff salaries	Low pay in State Corporations has impaired ability to attract and retain quality staff. However, there was also the issue of over-employment and related inefficiency affecting performance of the Corporations.	Rationalize staffing and salaries of State Corporations Pay should be a function of productivity.
	Role of SCAC in determination of salaries	There are cases where Boards have gone overboard and awarded hefty salaries that eventually become unmanageable to individual State Corporations and the Government.	The role of SCAC in determination of salaries should be retained.
	Rationalization of State Corporations	Intended privatization of commercial State Corporations without due regard to the role they can play in national development as has been the case in the newly industrialized countries.	Privatization should be guided where it is considered the only option. Reform of the Sector could be the better option to create an environment in which they can operate efficiently and competitively.
	Procurement	The Board has responsibility to exercise oversight over management but rarely gets to know what goes on in procurement. It is left to rely completely on management, which withhold information at will as there is no requirement under Public Procurement and Disposal Act for management to provide information. The Board would be helpless where the CEO, Procurement and Internal audit units collude.	There should be a mechanism for the Board to supervise procurement.
	Salaries and categorization	There is no clarity as to what is considered in categorization and determination of salary bands. Under the existing Guidelines, individuals are rewarded not because of work done but because of the category of the State Corporation. Non-Commercial State Corporations get a raw deal as their contribution is not quantifiable. Sometimes they contribute to the generation of profits by commercial entities. They have enormous unquantifiable economic contributions that go unnoticed and unrewarded as seen in salary bands provided in the Guidelines.	The system for determination of salaries should be reviewed to harmonize remuneration in the Sector. Reclassify State Corporations and review criteria for determining remuneration with a view to relating pay to performance

Appendix 2 – Advert Inviting Submissions by Stakeholders



REPUBLIC OF KENYA

THE PRESIDENTIAL TASKFORCE ON PARASTATAL SECTOR REFORMS

His Excellency the President of the Republic of Kenya, has appointed a taskforce to make recommendations on Parastatal Sector Reforms whose mandate is to conclude the current policy review on the Sector with the aim of addressing the sectoral challenges while achieving Government policy priorities including:

1. Designing the most appropriate institutional arrangement for the sector taking into account:
 - a) The new Constitution and particularly devolution and the mandate of the Salaries and Remuneration commission (SRC);
 - b) Administrative, Governance, Managerial and Audit needs;
 - c) The many categories, types and sizes of institutions in the sector; and
 - d) The relevance, viability and duplication of mandates.
2. Developing a clear mechanism for the Policy direction of the sector aimed at achieving desired national goals in the administration and management of the economy without hampering or degrading the commercial mandates or regulatory independence of the respective institutions.
3. Undertaking an audit of the human capital in the sector with the aim of getting qualified and capable people in the boards and senior management levels with specific bias to women, youth and other special categories of Kenyans.
4. Developing a framework for establishment of a sovereign wealth fund.

In this regard, views of the general public, professional as well as interest groups are hereby invited on any aspects of the above terms of reference. The submissions should reach the undersigned before close of business, Monday 26th August, 2013 through email: nawiti@ict.go.ke or sindimuli@yahoo.com or by courier to:


THE PRESIDENTIAL TASKFORCE ON PARASTATAL REFORMS
KICC 9TH FLOOR
NAIROBI

Isaac Awuondo
Co-Chairman

Abdikadir Mohammed
Co-Chairman

Appendix 3 – Letters Seeking Input from State Corporations Seeking

Submission of Views to the Presidential Taskforce – 1 August 2013



THE STATE CORPORATIONS ADVISORY COMMITTEE

Telephone: Nairobi 2227411
When replying please quote

Ref. No. **OP/SCAC.9/1/4**.....
and date

OFFICE OF THE SECRETARY
K.I.C.C.
P.O. Box 42145-00100
NAIROBI
.....1st August 2013.....

**Chairmen and Chief Executive Officers
(All State Corporations)**

**SUBMISSION OF VIEWS TO THE PRESIDENTIAL TASKFORCE ON PARASTATAL
SECTOR**

On 23rd July 2013 H. E. the President appointed a Taskforce on Parastatal Sector with a mandate to conclude the current policy review on the Sector with the aim of addressing the sectoral challenges while achieving Government policy priorities including:

1. The most appropriate institutional arrangement for the sector taking into account:
 - a) The new Constitution and particularly devolution and the mandate of the Salaries and Remuneration commission (SRC);
 - b) Administrative, Governance, Managerial and Audit needs;
 - c) The many Categories, types and sizes of institutions in the sector; and
 - d) The relevance, viability and duplication of mandates.
2. A clear mechanism for the Public Policy direction of the sector aimed at achieving desired national goals in the administration and management of the economy without hampering or degrading the commercial mandates or regulatory independence of the respective institutions.
3. An audit of the human resource with the aim of getting qualified and capable people in the boards and senior management levels with specific bias to women, youth and other special categories of Kenyans.

During the launch of the Taskforce on 26th July 2013, H.E. the President directed that the Taskforce should endeavour to seek views of the key stakeholders. You have been identified as a key stakeholder and you are hereby requested to submit views in tandem with the following Terms of Reference for the Taskforce, which are to:

- i. Review the draft policy on State and County Corporations and the official version submitted for consideration by the Government.
- ii. Review the inventory of State Corporations including establishment and classify them by function and scope of operation in terms of regional coverage.
- iii. Consider and recommend general institutional arrangement for all State corporations.
- iv. Articulate and recommend appropriate policy, administrative and governance framework for different categories of State corporations in accordance with their functions and operational requirements.
- v. Examine mandates and functions of existing State Corporations to confirm relevance and address issues of duplication and waste.
- vi. Examine and recommend the appropriate mechanisms for ensuring operations of State corporations are geared to delivery of specified national development goals.
- vii. Make recommendations for appropriate institutional arrangements for a sovereign wealth fund.
- viii. Review qualifications, knowledge and experience of all Chairmen and members of State Corporations Boards including gender and age, and recommend retention or replacement, taking into account legal requirements for replacement of directors.
- ix. Review recruitment and appointment policies and practices for purposes of mainstreaming gender, youth and other minority requirements.
- x. Identify functions previously performed by State Corporations on behalf of National Government but assigned to the county governments at Schedule Four (4) of the Constitution of Kenya, 2010.

- xi. Recommend how State corporations performing functions of the National Government will interface with county governments.

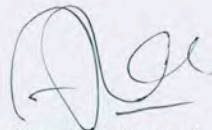
The Taskforce has a period of six (6) weeks to submit its report to the appointing authority beginning 26th July 2013.

Due to the urgency of the matter, you are required to submit your views on or before 12th August 2013. All correspondence should be sent in both hard and soft copy to Secretary SCAC. For submission of soft copy use the following email address **nawiti@ict.go.ke**.

We look forward to receipt of your invaluable input.



Isaac Awuondo
CHAIRMAN
TASKFORCE ON PARASTATAL SECTOR



Hon. Abdikadir Mohamed
CHAIRMAN
TASKFORCE ON PARASTATAL SECTOR

C.C.

All Principal Secretaries

Submission of Views to the Presidential Taskforce – 6 August 2013



THE STATE CORPORATIONS ADVISORY COMMITTEE

Telephone: Nairobi 2227411
When replying please quote

Ref. No. **OP/SCAC.9/1/4**
and date

OFFICE OF THE SECRETARY
K.I.C.C.

P.O. Box 42145-00100
NAIROBI

.....**6th August 2013**.....

All Chief Executive Officers of State Corporations

INFORMATION REQUIRED BY THE PRESIDENTIAL TASKFORCE ON REVIEW OF PARASTATAL SECTOR

On 23rd July 2013 H. E. the President appointed a Taskforce to review operations of the Parastatal Sector with a mandate to conclude the current policy review on the Sector with the aim of addressing the sectoral challenges while achieving Government policy priorities including:

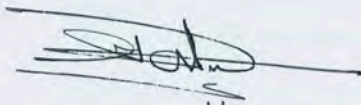
1. The most appropriate institutional arrangement for the sector taking into account:
 - a) The new Constitution and particularly devolution and the mandate of the Salaries and Remuneration commission (SRC);
 - b) Administrative, Governance, Managerial and Audit needs;
 - c) The many Categories, types and sizes of institutions in the sector; and
 - d) The relevance, viability and duplication of mandates.
2. A clear mechanism for the Public Policy direction of the sector aimed at achieving desired national goals in the administration and management of the economy without hampering or degrading the commercial mandates or regulatory independence of the respective institutions.
3. An audit of the human resource with the aim of getting qualified and capable people in the boards and senior management levels with

specific bias to women, youth and other special categories of Kenyans.

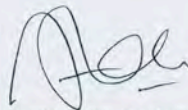
Pursuant to the above mandate and in order to expeditiously tackle the specific Terms of Reference for the Task Force, you are required to submit the following information on your State Corporations:

1. Management Accounts – 2013
2. Audited Accounts – 2010, 2011 and 2012
3. Budget – 2013/2014
4. Current Curriculum Vitae of all Board Chairmen, Members and Chief Executive Officers

The above information should reach the undersigned very urgently but in any case not later than **Monday, 12th August 2013**. You can email the information if properly authenticated in PDF format to **nawiti@ict.go.ke**.



Isaac Aduondo
CHAIRMAN



Hon. Abdikadir Mohamed
CHAIRMAN

Appendix 4 – Inventory of State Corporations as at 9 October 2013 as per the State Corporations Act, Chapter 446 of the Laws of Kenya

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
1.	Cereals and Sugar Finance Corporation	Cereals and Sugar Finance Corporation Act Cap. 329	Raise and lend money for purchase of cereals or sugar	Agriculture, Livestock & Fisheries
2.	Coffee Development Fund	Coffee Act, 2001	Provide sustainable, affordable credit and advances to coffee farmers	Agriculture, Livestock & Fisheries
3.	Cotton Development Authority	section 4 of the Cotton(Amendment) Act 2006, Cap 335	to promote, coordinate, monitor, regulate and direct the cotton industry in Kenya	Agriculture, Livestock & Fisheries
4.	Kenya Coconut Development Authority (KeCDA)	State Corporations Act, Cap 446 through Kenya Coconut Development Authority Order, 2007, Legal Notice No. 165 of 27th August 2007	to develop the coconut industry through regulatory, research and promotion of the coconut sub-sector in Kenya, in line with the national development goals.	Agriculture, Livestock & Fisheries
5.	Pyrethrum Board of Kenya (now Pyrethrum Regulatory Authority)	Pyrethrum Act, No. 22 of 2013	development, regulation and promotion of the pyrethrum industry	Agriculture, Livestock & Fisheries
6.	Sisal Board of Kenya	Sisal Industry Act, Cap 341	Promote and regulate the sisal industry	Agriculture, Livestock & Fisheries
7.	Tea Board of Kenya	Tea Act, Cap 343	To license tea manufacturing factories; carry out of research on tea through its technical arm, the Tea Research Foundation of Kenya; the register growers, buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.	Agriculture, Livestock & Fisheries
8.	Coffee Board of Kenya	Coffee Act, 2001	Promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest	Agriculture, Livestock & Fisheries
9.	Kenya Sugar Board (KSB)	Sugar Act, Cap 342 of 2001	Regulate and promote sugar industry	Agriculture, Livestock & Fisheries
10.	Canning Crops Board	Canning Crops Act Cap. 328	Promote canning of scheduled crops including inspection of canning factories and regulation of prices for scheduled crops	Agriculture, Livestock & Fisheries
11.	Agro-Chemical and Food Company	Companies Act, Cap 486	Carry on all or any other businesses of manufacturing related to alcohol, export and importation.	Agriculture, Livestock & Fisheries
12.	Kenya Meat Commission (KMC)	Kenya Meat Commission Act, Cap 363	Operating abattoirs and purchasing and processing of meat products	Agriculture, Livestock & Fisheries
13.	Muhoroni Sugar Company Ltd (Under Receivership)	Companies Act, Cap 486	Production of sugar	Agriculture, Livestock & Fisheries
14.	South Nyanza Sugar Company Limited	State Corporations Act (Cap 446)	To help the country attains self sufficiency in sugar production	Agriculture, Livestock & Fisheries
15.	Kenya Seed Company (KSC)	Companies Act, Cap 486	produce and market top quality seeds. Government seed bank	Agriculture, Livestock & Fisheries

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
16.	Kenya Veterinary Vaccine Production Institute	State Corporations Act, Cap 446 of the laws of Kenya through legal notice No. 223 of 4th June, 1990.	To produce safe, efficacious and affordable veterinary vaccines through undertaking research, providing information, marketing and distribution for improvement of the livestock industry.	Agriculture, Livestock & Fisheries
17.	National Cereals & Produce Board (NCPB)	National Cereals and Produce Board Act, Cap 338	Market stabilization, famine relief and strategic grain reserve	Agriculture, Livestock & Fisheries
18.	Coffee Research Foundation	Companies Act, Cap 486 (limited by guarantee)	Promote research into and investigate all issues relating to coffee and such other agricultural and commercial systems as are associated with coffee	Agriculture, Livestock & Fisheries
19.	Kenya Agricultural Research Institute (KARI)	Science and Technology Act, Cap 250	Carry out research in the fields agriculture, veterinary Sciences, Forestry, Industrial and allied Technology	Agriculture, Livestock & Fisheries
20.	Kenya Sugar Research Foundation	Companies Act, Cap 486	Undertake research in sugar industry	Agriculture, Livestock & Fisheries
21.	Tea Research Foundation	Companies Act	To generate and disseminate knowledge and technology through innovative research for improved production, processing, value addition and marketing of Kenyan tea while conserving the environment	Agriculture, Livestock & Fisheries
22.	National Biosafety Authority	The Biosafety Act No. 2 of 2009	to exercise general supervision and control over the transfer, handling and use of genetically modified organisms (GMOs)	Agriculture, Livestock & Fisheries
23.	Agricultural Development Corporation	Agricultural Development Corporation Act, Cap 444 of 1986	Promotion and execution of agricultural schemes and reconstruction in Kenya by initiating, assisting or expansion of agricultural undertaking lands and enterprises. The Government land bank for agriculture land	Agriculture, Livestock & Fisheries
24.	Kenya Animal Genetics Resource Centre	Kenya Animal Genetic Resources Centre Order, 2011	Establish a national livestock resources gene bank	Agriculture, Livestock & Fisheries
25.	Kenya Tsetse and Trypanosomiasis Eradication Council	Kenya Tsetse and Trypanosomiasis Eradication Council Order, 2012	advise the Government on the policy on tsetse and trypanosomiasis eradication in Kenya and its implementation;	Agriculture, Livestock & Fisheries
26.	Agricultural, Fisheries and Food Authority	Agriculture, Fisheries and Food Authority Act, No. 13 of 2013	Regulation agriculture sector	Agriculture, Livestock & Fisheries
27.	Kenya Leather Development Council	State Corporations Act, Cap 446 under Kenya Leather Development Council Order, 2011	Promote, direct, coordinate and harmonize all activities in the leather subsector	Agriculture, Livestock & Fisheries
28.	Kenya Plant Health Inspectorate Services (KEPHIS)	Kenya Plant Health Inspectorate Service Act, 2011	Regulate matters relating to plant protection, seeds and plant varieties; administer and enforce sanitary and phytosanitary measures; support the administration and enforcement of food safety measures; establish service laboratories to monitor quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce	Agriculture, Livestock & Fisheries
29.	National Irrigation Board	Irrigation Act, Cap 347	development, control and improvement of national irrigation schemes in Kenya,	Agriculture, Livestock & Fisheries
30.	Bukura Agricultural College	Bukura Agricultural College Act of 1999	Provide education in agriculture and other auxiliary subjects	Agriculture, Livestock & Fisheries
31.	Kenya Agricultural and Livestock Research Organization	Kenya Agricultural and Livestock Act, 2013	To undertake research in agriculture and allied areas	Agriculture, Livestock & Fisheries

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
32.	Kenya Marine and Fisheries Research Institute	Science and Technology, Cap 250	Research in Marine and Freshwater Fisheries	Agriculture, Livestock & Fisheries
33.	The Kenya Veterinary Board (KVB)	Veterinary Surgeons' and Veterinary Para-professionals (VSVP) Act No. 29 of 2011	To exercise general supervision and control over the training, business, practice and employment of veterinary surgeons and veterinary paraprofessionals in Kenya.	Agriculture, Livestock & Fisheries
34.	Animal Technicians Council	Animal Technicians Act No. 11 of 2011	Safeguard interests of all animal technicians Licence and regulate the business and practice of animal technicians	Agriculture, Livestock & Fisheries
35.	Horticultural Crops Development Authority	Agriculture Act Cap 318 through a subsidiary legislation in 1967, Legal Notice No. 190 HCDA Order 2011	To regulate the horticulture industry through licensing and application of rules as prescribed under the Agriculture Act, Cap 318 and also to provide advisory and marketing services to the stakeholders in the industry for planning purposes	Agriculture, Livestock & Fisheries
36.	Chemilil Sugar Company Ltd	Companies Act, Cap 486	Crush sugar cane and manufacture sugar and related products.	Agriculture, Livestock & Fisheries
37.	Nzoia Sugar Company Ltd	Companies Act, Cap 486	to crush sugar cane and manufacture sugar and related products	Agriculture, Livestock & Fisheries
38.	Kenya Dairy Board	Dairy Industry, Cap 336	improvement and control of the dairy industry and its products	Agriculture, Livestock & Fisheries
39.	LAPSSET Corridor Development Authority	State Corporations Act, Cap 446 under LAPSSET Corridor Development Authority, Order, 2013	plan, co-ordinate and sequence LAPSSET Corridor projects in collaboration with Implementing ministries and agencies	Executive Office of the Presidency
40.	Kenya Ordnance Factories Corporation	State Corporations Act Cap 446 through Legal Notice No. 125 of 23 July 1997	To manufacture military Hardware, Machinery and Equipment	Defence
41.	Anti-Female Genital Mutilation Board	Prohibition of Female Genital Mutilation No. 32 of 2011	Design surveys and coordination public awareness programmes Advise the government on matters relating to female genital mutilation Design and formulate a policy on the planning, financing and coordinating all activities relating to female genital mutilation	Devolution & Planning
42.	South - South Centre	South - South Centre Order, 2012	Initiate, organize and manage South-South activities and projects in consultation with the Government, civil society organizations or private sector institutions	Devolution & planning
43.	Youth Enterprises Development Fund	State Corporations Act, Cap 446	Provide loans to existing micro-finance institutions (MFIs), NGOs and SACCOs for on-lending to youth enterprises, attract and facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to youth enterprises and support youth oriented micro, small and medium enterprises to develop linkages with large enterprises, facilitate marketing of products of youth enterprise products and youth employment;	Devolution & Planning
44.	Constituency Development Fund	Constituencies Development Fund Act, No. 30 of 2013	Ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of infrastructural development, wealth creation and in the fight against poverty at the constituency level.	Devolution & Planning

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
45.	Kenya National Bureau of Statistics	Statistics Act, No. 4 of 2006	principal agency of the Government for collecting, analysing and disseminating statistical data in Kenya and shall be the custodian of official statistical information	Devolution & Planning
46.	National Coordinating Agency for Population & Development	State Corporations Act through The National Coordinating Agency For Population and Development Order, 2004	develop policies relating to population	Devolution & Planning
47.	Public Benefits Organizations Regulatory Authority (Formerly NGO Coordination Board)	Public Benefits Organizations Act, 2013	Register public benefit organizations, maintain a register of the organizations and interpret the national policy on public benefit organizations so as to assist in its smooth implementation and observance by Government ministries, departments and agencies	Devolution & Planning
48.	Kenya School of Government	Kenya School of Government Act, 2012	provide learning and development programmes to build capacity for the Public Service	Devolution & Planning
49.	Kenya Institute of Public Policy Research & Analysis (KIPPRA)	Kenya Institute for Public Policy Research and Analysis Act, No. 15 of 2006	Public policy research and analysis and related advisory services	Devolution & Planning
50.	Drought Management Authority	State Corporations Act, Cap 446 through National Drought Management Authority Order, 2011	On its own or in association with other authorities or persons, establish mechanisms to ensure that drought does not become famine and the impacts of climate change are sufficiently mitigated	Devolution & Planning
51.	Institute of Human Resource Management	Human Resource Management Professionals Act, 2012	Establish, monitor and publish the standards of professional competence and practice amongst human resource professionals; Register persons who meet the required professional and ethics standards; Promote research in human resource practice and related matters, Publish books, periodicals, journals and articles on human resource; Regulate the practice, competence and professional conduct of human resource professionals; Promote and protect the welfare and interests of the human resources profession	Devolution and Planning
52.	Tourism Research Institute	the Tourism Act, No. 28 of 2011	to undertake and co-ordinate tourism research and analysis in accordance with the provisions of this Act	East African Affairs, Commerce & Tourism
53.	Kenya National Trading Corporation (KNTC)	Companies Act, Cap 486	Promoting and growing wholesale and retail trade through efficiently trade in quality products and services to ensure balance of supply and demand in the Country's distribution networks, while promoting e-commerce and global trade with an aim to maximizing stakeholder's value.	East African Affairs, Commerce & Tourism
54.	Kenyatta International Convention Centre	Tourism Act, Cap 28 of 2011	to promote business of meetings, conferences and exhibitions	East African Affairs, Commerce & Tourism
55.	Kenya Safari Lodges and Hotels Ltd.	Companies Act Cap. 486	Provision of premium hotel and lodge accommodation, current conference and business meeting venues, customized beach and safari experiences as well as high value niche products	East African Affairs, Commerce & Tourism
56.	Kenya Tourist Finance Corporation (Formally KTDC)	The Tourism Act, 2011	to develop tourism facilities and finance private investors	East African Affairs, Commerce & Tourism
57.	Kenya Tourist Board	Tourism Act No. 28 of 2011	Promote and market <i>Kenya</i> as a <i>tourist</i> destination locally and internationally	East African Affairs, Commerce & Tourism

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
58.	Export Promotion Council (EPC)	Companies Act, Cap 486 (limited by guarantee)	Develop and promote Kenya's exports	East African Affairs, Commerce & Tourism
59.	Tourism Fund Board of Trustees (Formerly Catering and Tourism Development Levy Trustees)	Hotels and Restaurants Act, Cap 494	Control and administration of the training and tourism development levy fund	East African Affairs, Commerce & Tourism
60.	Tourism Regulatory Authority	Tourism Act	regulate the tourism sector	East African Affairs, Commerce & Tourism
61.	Kenya Utalii College (KUC)		training qualified professionals for the Hospitality and Tourism industry	East African Affairs, Commerce & Tourism
62.	Bomas of Kenya	Companies Act, Cap 486	Preserve, maintain and promote the rich diverse cultural values of various ethnic groups of Kenya	East African, Commerce & Tourism
63.	Golf Hotel Kakamega	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
64.	Sunset Hotel Kisumu	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
65.	Kabarnet Hotel Limited	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
66.	Mt Elgon Lodge	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
67.	Kenya National Innovation Agency	Science, Technology and Innovation Act, NO. 28 OF 2013	Develop and manage the Kenya National Innovation System, and for that purpose to institutionalize linkages between universities, research institutions, the private sector, the Government, and other actors in that System; and cause the creation of science and innovation parks, institutes or schools or designate existing institutions as centres of excellence in priority sectors	Education Science and Technology
68.	Kenya Universities and Colleges Central Placement Service	The Universities Act, No. 42 of 2012, (Section 55)	Uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved the by Government	Education, Science & Technology
69.	Technical and Vocational Education and Training Curriculum Development, Assessment and Certification	Technical and Vocational Education and Training Act No. 29 of 2013	Design and development of curricula for the training institutions' examination, assessment and competence certification; make rules with respect to such examinations and competence assessments; issue certificates to candidates who satisfy national TVET examination and competence assessment requirements; and promote recognition of its qualifications in foreign systems;	Education, Science & Technology
70.	Jomo Kenyatta Foundation	Companies Act, Cap. 486, Laws of Kenya (limited by guarantee)	Advance education and knowledge for poverty alleviation through quality publishing and provision of scholarships	Education, Science & Technology
71.	Kenya Literature Bureau (KLB)	Kenya Literature Bureau Act, Cap 209	publishing, printing and distributing literary, educational, cultural and scientific books, periodicals, journals, magazines, digital and electronic material and works of every description	Education, Science & Technology
72.	University of Nairobi Enterprises Ltd	Companies Act Cap. 486	The commercial arm of the University of Nairobi charged with the responsibility of promoting and coordinating income-generating activities in the University	Education, Science & Technology

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
73.	School Equipment Production Unit	Companies Act Cap. 486	Design, manufacture, supply and distribute science materials and apparatus for education	Education, Science & Technology
74.	University of Nairobi Press (UONP)	Companies Act Cap. 486	Publishing	Education, Science & Technology
75.	Jomo Kenyatta University Enterprises Ltd.	Companies Act Cap. 486	Enterprises Ltd. that undertakes several activities related to the business industry for various clients such as MSMEs, banks, parastatals, corporations and government ministries. These activities include training, development of tailor-made curricula, course material development and consultancy services in collaboration with technical JKUAT departments	Education, Science & Technology
76.	Rivatex (East Africa) Ltd.	Companies Act Cap. 486	Training, consultancy, research, extension and manufacture of textile products	Education, Science & Technology
77.	Higher Education Loans Board	Higher Education Loans Board Act , 1995.	Management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya	Education, Science & Technology
78.	Kenya Institute of Curriculum Development	Kenya Institute of Curriculum Development Act, 2013	Advise the Government on matters pertaining to curriculum development, and implement the policies relating to curriculum development in basic and tertiary education and training	Education, Science & Technology
79.	Kenya National Commission for UNESCO	Kenya National Commission For UNESCO Act, No. 5 of 2013	Liaise with UNESCO and implement UNESCO activities and budgeted programs	Education, Science & Technology
80.	Kenya National Examination Council (KNEC)	Kenya National Examinations Council Act, 2012	Conduct of examinations at basic and tertiary levels	Education, Science & Technology
81.	Technical and Vocational Education Training Authority	Technical And Vocational Education And Training Act, No. 29 of 2013	governance and management of institutions offering technical and vocational education and training; to provide for coordinated assessment, examination and certification	Education, Science & Technology
82.	Commission for University Education	Universities Act, No. 42 of 2012	The establishment, accreditation and governance of universities	Education, Science & Technology
83.	National Commission for Science, Technology and Innovations	Science and Technology and innovation Act, 2013	Regulate and assure quality in science, technology and innovation sector and advise the government in related matters	Education, Science & Technology
84.	Chuka University	Egerton University Act, Cap 214 through the Chuka University College Order, 2007	Provide and advance university education and training	Education, Science & Technology
85.	Cooperative University College	Jomo Kenyatta University of Agriculture and Technology Act, Cap 210E through Co-operative University College Order, 2011	Provide and advance university education and training	Education, Science & Technology
86.	Dedan Kimathi University	Jomo Kenyatta University of Agriculture and Technology Act, No. 8 of 1994 through the Kimathi University College of Technology Order, 2007	Provide and advance university education and training	Education, Science & Technology
87.	Egerton University	Egerton University Act, Cap 214	Provide and advance university education and training	Education, Science & Technology
88.	Embu University College	University of Nairobi Act of 2011	Provide and advance university education and training	Education, Science & Technology

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
89.	Garissa University College	Moi University Act Chapter 210A	University Education	Education, Science & Technology
90.	Jaramogi Oginga Odinga University of Science and Technology	Maseno University Act, Cap 210D through the Bondo University College Order, 2009	Provide and advance university education and training	Education, Science & Technology
91.	Jomo Kenyatta University of Agriculture And Technology	Jomo Kenyatta University of Agriculture and Technology, Cap 210	Provide and advance university education and training	Education, Science & Technology
92.	Karatina University	Moi University Act, Cap 210A through Karatina University College Order, 2009	Provide and advance university education and training	Education, Science & Technology
93.	Kenya Multi-Media University	Jomo Kenyatta University of Agriculture and Technology Act through the Multimedia University College of Kenya Order, 2008	To provide and advance university education and training	Education, Science & Technology
94.	Kenyatta University	Kenyatta University Act, Cap 210C	to provide and advance university education and training	Education, Science & Technology
95.	Kibabii University College	Masinde Muliro University Act	Provide and advance university education and training	Education, Science & Technology
96.	Kirinyaga University College	Jomo Kenyatta University of Agriculture and Technology, Cap 210	to provide and advance university education and training	Education, Science & Technology
97.	Kisii University	Egerton University Act, Cap 214 through the Kisii University College Order, 2007	to provide and advance university education and training	Education, Science & Technology
98.	Laikipia University	Egerton University Act, Cap 214 through the Laikipia University College Order, 2009	to provide and advance university education and training	Education, Science & Technology
99.	Maasai Mara University	Moi University Act, Cap 210A through Narok University College Order, 2008	to provide and advance university education and training	Education, Science & Technology
100.	Machakos University College	Kenyatta University Act	Provide and advance university education and training	Education, Science & Technology
101.	Maseno University	Maseno University Act, Cap 210D	to provide and advance university education and training	Education, Science & Technology
102.	Masinde Muliro University of Science and Technology	Masinde Muliro University of Science and Technology Act, Cap 210F	to provide and advance university education and training	Education, Science & Technology
103.	Meru University of Science and Technology	Jomo Kenyatta University of Agriculture and Technology Act, Cap 210E, through the Meru University College of Science and Technology Order, 2008	to provide and advance university education and training	Education, Science & Technology
104.	Moi University	Moi University Act	to provide and advance university education and training	Education, Science & Technology
105.	Murang'a University College	Murang'a University College order legal notice No. 129 of September 2011 as a constituent College of Jomo Kenyatta University of Agriculture and Technology	to provide and advance university education and training	Education, Science & Technology

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
106.	Pwani University	The Kenyatta University Act, Cap. 210c, through the Pwani University College Order, 2007	to provide and advance university education and training	Education, Science & Technology
107.	Rongo University College	Legal Notice NO.70, Kenya Gazette Supplement NO.51, on 17th June 2011.	to provide and advance university education and training	Education, Science & Technology
108.	South Eastern Kenya University	University of Nairobi Act through the South Eastern University College Order, 2008	to provide and advance university education and training	Education, Science & Technology
109.	Taita Taveta University College	Jomo Kenyatta University of Agriculture and Technology, Cap 210	to provide and advance university education and training	Education, Science & Technology
110.	Technical University of Mombasa	Legal Notice No. 160 of 23rd August 2007,	to provide and advance university education and training	Education, Science & Technology
111.	The Technical University of Kenya	the University of Nairobi Act through the Kenya Polytechnic University College Order, 2007	to provide and advance university education and training	Education, Science & Technology
112.	University of Eldoret	Moi University Act, Cap 210A through Chepkoilel University College Order, 2010	to provide and advance university education and training	Education, Science & Technology
113.	University of Kabianga	Moi University Act, Cap 210A through the Kabianga University College Order, 2009	Provide and advance university education and training	Education, Science & Technology
114.	University of Nairobi	University of Nairobi Act, Cap 210	to provide and advance university education and training	Education, Science & Technology
115.	KCA University		Provide University and professional education and training	Education, Science & Technology
116.	Rural Electrification Authority	Energy Act, Cap 12	To accelerate the pace of rural electrification in order to promote sustainable socio-economic development	Energy & Petroleum
117.	Kenya Electricity Generating Company (KENGEN)	Companies Act, Cap 486	Electric power generation	Energy & Petroleum
118.	Kenya Electricity Transmission Company (KETRACO)	Companies Act, Cap 486	Develop new high voltage electricity transmission infrastructure forming the backbone of the National Transmission Grid	Energy & Petroleum
119.	Kenya Pipeline Company (KPC)	Companies Act, Cap 486	Provide the most economical and modern way of transporting and storing petroleum products	Energy & Petroleum
120.	Kenya Power and Lighting Company (KPLC)	Companies Act, Cap 486	transmits, distributes and retails electricity to customers throughout Kenya	Energy & Petroleum
121.	National Oil Corporation of Kenya	Companies Act, Cap 481	Participation in up and downstream aspects of petroleum industry	Energy & Petroleum
122.	Geothermal Development Company (GDC)	Companies Act, Cap 486	To promote rapid development of geothermal resources in Kenya through surface exploration and drilling for steam. To avail steam to power plant developers for electricity generation. To manage the geothermal reservoirs- to ensure constant supply of steam for power generation To promote alternative uses of geothermal resources other than electricity generation. These include green house heating, drying of	Energy & Petroleum

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
			grains, pasteurizing milk, cooling and heating of rooms, among others.	
123.	Energy Regulatory Commission	Energy Act, Cap 12	Regulate the energy sector	Energy & Petroleum
124.	Kenya Nuclear Electricity Board	Kenya Nuclear Electricity Board Order, 2012.	Promote and expedite the development of nuclear electricity in Kenya	Energy and Petroleum
125.	Mombasa Pipeline Board	Mombasa Pipeline Board Cap 373 -	To supply water in bulk to such water undertakers as the Minister may, after consultation with the Board, by notice in the Gazette, designate in that behalf	Environment, Water & Natural Resources
126.	Water Services Trust Fund	Water Act, Cap 372	According to the Trust Deed, WSTF's mandate is to provide financial support for improved access to water and sanitation in areas without adequate services including supporting capacity building activities and initiatives that aim at enabling communities to plan, implement, manage, operate and sustain water services-by creating awareness and disseminating information regarding community management of water services, and encouraging their active participation in implementation and management.	Environment, Water & Natural Resources
127.	Nyayo Tea Zones Development Corporation	State Corporations Act, Cap 446 through Nyayo Tea Zones Development Corporation Order	to promote forest conservation by providing buffer zones of tea and assorted tree species to check human encroachment into forestland. This is achieved through the establishment of tea and assorted tree buffer belts around those forests.	Environment, Water & Natural Resources
128.	National Water Conservation and Pipeline Corporation	Water Act 2002	Development of water infrastructure and supply of water	Environment, Water & Natural Resources
129.	Kenya Wildlife Service (KWS)	Wildlife (Conservation and Management) Act, Cap 376	conservation, management and utilization of all types of fauna (not being domestic animals) and flora	Environment, Water & Natural Resources
130.	Kenya Water Towers Agency	State Corporations Act , Cap 446 enabled by Kenya Water Towers Agency Order, 2012	Co-ordinate and oversee the protection, rehabilitation, conservation, and sustainable management of water towers	Environment, Water & Natural Resources
131.	Kenya Forest Service	Forests Act, No. 7 of 2005	Establishment, development and sustainable management, including conservation and rational utilization, of forest resources for the socio-economic development of the country	Environment, Water & Natural Resources
132.	Water Resources Management Authority	Water Act, 2002, Cap 372	To be the lead agency in water resources management	Environment, Water & Natural Resources
133.	Water Services Regulatory Board	Water Act, Cap 372	Promotion and regulation of water provision services	Environment, Water & Natural Resources
134.	National Environmental Management Authority (NEMA)	Environmental Management and Coordination Act, No. 8 1999	to exercise general supervision and co-ordination over all matters relating to the environment	Environment, Water & Natural Resources
135.	Kenya Water Institute	Kenya Water Institute Act, 2001	Provide, directly or in collaboration with other institutions of higher learning, services in human resource development, consultancy, research and development in the water sector	Environment, Water & Natural Resources
136.	Kenya Forestry Research Institute	Science and Technology, Act Cap 250	Research in forestry and allied natural resources	Environment, Water & Natural Resources

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
137.	Athi Water Services Board	Water Act, Cap 372	Efficient and economical provision of water services within the Nairobi and Athi Basin/Region	Environment, Water & Natural Resources
138.	Coast Water Services Board	Water Act, Cap 372	Efficient and economical provision of water services within the Coast Region	Environment, Water & Natural Resources
139.	Lake Victoria North Water Service Board	Kenya Gazette Notice No. 1717 of 12th March, 2004 and licensed by the Water Services Regulatory Board (WSREB) on 5th April, 2004	provision of water and sanitation services	Environment, Water & Natural Resources
140.	Lake Victoria South Water Service Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources
141.	Northern Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources
142.	Rift Valley Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources
143.	Tana Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources
144.	Tanathi Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources
145.	Coast Development Authority	Coast Development Authority Act, Cap 449	Plan and co-ordinate the implementation of development projects in whole of the Coast Province and the exclusive economic zone	Environment, Water & Natural Resources
146.	Ewaso Ng'iro North Development Authority	Ewaso Ng'iro North River Basin Development Authority Act, Cap 448	Plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro North River Basin and catchment areas	Environment, Water & Natural Resources
147.	Ewaso Ng'iro South Development Authority	Ewaso Ng'iro South River Basin Development Authority Act, Cap 447	plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro South River Basin and catchment areas	Environment, Water & Natural Resources
148.	Kerio Valley Development Authority	Kerio Valley Development Authority Act, Cap 441	to plan, initiate, co-ordinate and monitor implementation of programmes and projects that transcend administrative boundaries within KVDA's area of operation. It is also mandated to maintain a liaison between the institutions (KVDA), Government, Private sector and other agencies on matters of development in the area in view of limiting duplication of activities and ensuring best use of Technical, Financial, Human and Natural resources	Environment, Water & Natural Resources
149.	Lake Basin Development Authority	Lake Basin Development Authority Act, Cap 442	Carry out integrated sustainable development planning, Implement development programmes and projects, Coordinate development programmes and activities, Promote management and conservation of natural resources, and to Monitor and evaluate development programmes and projects	Environment, Water & Natural Resources
150.	Tana & Athi Rivers Development Authority	Tana and Athi Rivers Development Authority Act, Cap 443	plan and co-ordinate the implementation of development projects in the TRDA areas	Environment, Water & Natural Resources
151.	National Cancer Institute of Kenya	Cancer Prevention and Control Act, 2012	promote public awareness about the causes, consequences, means of prevention and control of cancer	Health
152.	Kenya Medical Supplies Authority (former Kenya Medical Supplies	The Kenya Medical Supplies Authority Act, No. 20 of 2013	procure, warehouse and distribute drugs and medical supplies	Health

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
	Agency)			
153.	Kenyatta National Hospital	State Corporations Act, Cap 446 through Kenyatta National Hospital Board order, 1987	to provide specialized healthcare, facilitate training and research and participate in National Health Planning and Policy for the benefit of the nation and the region at large	Health
154.	Moi Teaching and Referral Hospital	State Corporations Act, Cap 446	Provision of Quality Healthcare, Training and Research.	Health
155.	National Aids Control Council	State Corporations Act through National AIDS Control Council Order, 1999,	to coordinate stakeholders in the multisectoral response to HIV and AIDS in Kenya.	Health
156.	National Hospital Insurance Fund	National Hospital Insurance Fund Act, No. 9 of 1998	to provide health insurance to Kenyans over the age of 18	Health
157.	National Quality Control Laboratories	Pharmacy and poisons Act Cap. 244	Examination and testing of drugs and any material or substance from or with which and the manner in which drugs may be manufactured, processed or treated and ensuring the quality control of drugs and medicinal substances	Health
158.	Kenya Medical Laboratory Technicians and Technologists Board	Medical Laboratory Technicians and Technologists Act Chapter 253A	Exercise general supervision and control over the training, business, practice and employment of laboratory technicians and technologists in Kenya and to advise the Government in related matters	Health
159.	Kenya Medical Training College (KMTC)	Kenya Medical Training College Act, Cap 261	Training in health services	Health
160.	Kenya Medical Research Institute (KEMRI)	Science and Technology Act, Cap 250	Medical research	Health
161.	Kenya Nutritionists and Dieticians Institute	Nutritionists and Dieticians Act No. 18 of 2007	Determine and set a framework for the professional practice of nutritionists and dieticians Set and enforce standards of professional practice and ethics	Health
162.	Nursing Council of Kenya	Nurses Act Cap 257	Establish and improve standards of all branches of the nursing profession in all their aspects and to safeguard the interests of all nurses; Establish and improve the standards of professional nursing and of health care within the community; Make provision for the training and instruction for persons seeking registration or enrolment under this Act; Prescribe and regulate syllabuses of instruction and courses of training for persons seeking registration or enrolment under this Act; Recommend to the Minister institutions to be approved institutions for training of persons seeking registration or enrolment under this Act; Prescribe and conduct examinations for persons seeking registration or enrolment under this Act;	Health
163.	East African Portland Cement Company Ltd.	Companies Act, Cap 486	Manufacture cement and related products	Industrialization & Enterprise Development
164.	Kenya Wine Agencies Ltd (KWAL)		to produce and distribute wines and spirits to both domestic and international markets	Industrialization & Enterprise Development

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
165.	New Kenya Co-operative Creameries	Companies Act Ca. 486	Milk processing and production of dairy products	Industrialization & Enterprise Development
166.	Yatta Vineyards Ltd	Companies Act Cap. 486	Grape farming	Industrialization & Enterprise Development
167.	Development Bank of Kenya Ltd.	Companies Act, Cap 486 Merchant Shipping Act, 1989	Development Finance	Industrialization & Enterprise Development
168.	KWA Holdings	Companies Act, Cap 486	Holding Company	Industrialization & Enterprise Development
169.	Numerical Machining Complex	Companies Act, 486	the commercial production of steel, engineering design, and development of machinery and components.	Industrialization & Enterprise Development
170.	Industrial and Commercial Development Corporation	Industrial and Commercial Development Corporation Act, Cap 445	Facilitating the industrial and economic development of Kenya	Industrialization & Enterprise Development
171.	Kenya Industrial Estates (KIE)	Companies Act, Cap 486	Address indigenization of businesses, capital formation, regional dispersion of wealth, and exploitation of local resources through provision of industrial sheds, subsidized credit and improvement of entrepreneurial skills to indigenous owned Micro, Small and Medium industries (MSMIs) with special focus on rural industrial development.	Industrialization & Enterprise Development
172.	Sacco Societies Regulatory Authority	Sacco Societies Act 2008	To licence and supervise Deposit Taking Sacco Societies in Kenya.	Industrialization & Enterprise Development
173.	Kenya Investment Authority	Investment Promotion Act, No. 6 of 2004	Investment Promotion Act, No. 6 of 2004	Industrialization & Enterprise Development
174.	Kenya Industrial Property Institute	Industrial Property Act, 2001	Promotion of inventive and innovative activities, to facilitate the acquisition of technology through the grant and regulation of patents, utility models, technovations and industrial designs	Industrialization & Enterprise Development
175.	Anti-Counterfeit Agency	The Anti-Counterfeit Act, 2008	Combat trade in counterfeit goods	Industrialization & Enterprise Development
176.	Kenya Bureau of Standard (KBS)	Standards Act, Cap 496	Promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice	Industrialization & Enterprise Development
177.	Kenya National Accreditation Service	State Corporations Act, Cap 446 through Kenya Accreditation Service Order, 2009	Regulation of accreditation of conformity assessment bodies	Industrialization & Enterprise Development
178.	Export Processing Zones Authority (EPZA)	Export Processing Zones Act, Cap 517	promotion and facilitation of export oriented investments and the development of enabling environment for such investment	Industrialization & Enterprise Development
179.	Kenya Industrial Research & Development Institute	Science and Technology Act, Cap 250	Research in the fields of Civil Engineering, Mechanical Engineering, Textile Technology, Electrical Engineering , Mining, Power Resources, Chemical Engineering, Industrial Chemistry, Food Technology, Ceramics and Clay Technology	Industrialization & Enterprise Development
180.	Small and Micro Enterprises Authority	Micro and Small Enterprises Act, 2012	Promotion, development, and regulation of micro and small enterprises	Industrialization and Enterprise Development

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
181.	Media Council of Kenya	Media Act 2007	regulation of media and in the conduct and discipline of journalists	Information and Communication
182.	Kenya Yearbook Editorial Board	State Corporations Act, Cap 446 through the Kenya Yearbook Order, 2007 to:	Facilitating Government communication services through the publication of the Kenya Yearbook	Information, Communication & Technology
183.	Kenya Broadcasting Corporation	Kenya Broadcasting Corporation Act, Cap 221	National Broadcasting	Information, Communication & Technology
184.	Postal Corporation of Kenya	Postal Corporation Act, Cap 411	responsible for provision of postal service in Kenya to encourage and facilitate personal saving	Information, Communication & Technology
185.	Brand Kenya Board	State Corporations Act, Cap 446 through the Brand Kenya Board Order, 2008	Co-ordinate initiatives for marketing the country in order to maximize their efficiency; and create and maintain the Kenya brand to identify and distinguish Kenyan products, services and concepts.	Information, Communication & Technology
186.	Information and Communications Technology Authority	State Corporations Act, Cap 446 through Information and Communications Technology Authority Order, No. 183 of 2013	Advise the Government on all relevant matters pertaining to the development, co-ordination and promotion of information and communications technology industries in the country.	Information, Communication & Technology
187.	Konza Technopolis Authority	Konza Technopolis Development Order, 2012	to plan, develop, regulate and manage Konza Techno City as a world class, mixed use and sustainable city.	Information, Communication & Technology
188.	Communications Commission of Kenya	Kenya Information and Communications Act, Cap 411A	To licence and regulate postal, information and communication services	Information, Communication & Technology
189.	Kenya Institute of Mass Communication	State Corporations Act, Cap 446 under Kenya Institute of Mass Communication Order, 2011	Training in communication and the cinematic-arts	Information, Communication & Technology
190.	The National Council for Children's Services	Kenya Gazette Supplement No. 89 16th December, 2005, (Legislative Supplement No. 53), Legal Notice No. 145, The Children Act, 2001 (NO. 8 OF 2001) Sec 30	to provide oversight and co-ordination of children activities in the country.	Interior & Co-ordination of National Government
191.	National Campaign Against Drug Abuse Authority (now National Authority for the Campaign Against Alcohol and Drug Abuse)	National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012	control of alcohol and drug abuse	Interior & Coordination Of National Government
192.	Kenya Citizens and Foreign Nationals Management Service	Kenya Citizens and Foreign Nationals Management Service Act No. 31 of 2011	Implement policies, laws and other matters relating to immigration, births, deaths, identification and registration of persons including issue of passports	Interior and Coordination of National Government
193.	Kenya Red Cross Society	Kenya Red Cross society Cap. 256	Furnish volunteer aid to sick and wounded in time of war and non-belligerents and to prisoners of war and civilian sufferers from effects of war Provide relief to victims of catastrophe Improvement of health and prevention of diseases	Interior and Coordination of National Government
194.	St. John Ambulance of Kenya	St. John Ambulance of Kenya Cap. 259	Encourage and promote all works of charity for the relief of persons in sickness, distress, suffering, and danger without any distinction of race, class, colour or creed	Interior and Coordination of National Government

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
195.	National Council for Persons with Disabilities	Persons with Disability Act, 2003	to formulate and implement policies that are geared towards mainstreaming Persons with Disabilities in to the national economy	Labour, & Social Security Services
196.	National Industrial Training Authority	Industrial Training Act Cap 237	to promote the highest standards in the quality and efficiency of industrial training in Kenya and ensure an adequate supply of properly trained manpower at all levels in industry	Labour, & Social Security Services Move to Industrialization and Enterprise Development
197.	National Social Security Fund Board of Trustees	National Social Security Fund Act, Cap 258	provide for contributions to and the payment of benefits out of the Fund; and for matters connected therewith and incidental	Labour, & Social Security Services
198.	The National Social Security Assistance Authority	Social Assistance Act, No.2013	Identify and provide social assistance to persons in need of social assistance;	Labour, Social Security & Services
199.	National Construction Authority	National Construction Authority Act No. 41 of 2011	To regulate and coordinate the construction industry for sustainable social and economic development	Lands Housing & Urban Development
200.	Research Development United Company Ltd	Companies Act Cap. 486	Research on housing and housing materials	Lands, Housing & Urban Development
201.	National Housing Corporation	Housing Act, Cap 117	to play a principal role in the implementation of the Government's Housing Policies and Programmes.	Lands, Housing & Urban Development
202.	National Bank of Kenya	Companies Act Cap. 486	Help Kenyans get access to credit and control their economy	National Treasury
203.	Privatization Commission	Privatization Act, Cap 485C	to formulate, manage, and implement the Privatization Programme.	National Treasury
204.	Consolidated Bank of Kenya	Companies Act, Cap 486	Provide banking services	National Treasury
205.	Kenya National Assurance Co. (2001) Ltd	Companies Act, Cap 486	Life assurance company to take over the assets and liabilities of the Closed Life Fund of the Kenya National Assurance Company Limited (under Liquidation).	National Treasury
206.	Kenya Reinsurance Corporation Ltd	Kenya Reinsurance Corporation Act, Cap 487	to undertake and transact in any manner reinsurance and insurance business in and out of Kenya	National Treasury
207.	Agricultural Finance Corporation	Agricultural Finance Corporation Act Cap. 323	Development of agriculture and agricultural industries by making loans to farmers, groups and other persons engaging in agriculture or agricultural industries	National Treasury
208.	Industrial Development Bank	Companies Act, Cap 486	A Development Finance Institution (DFI)	National Treasury
209.	Kenya Post Office Savings Bank	Kenya Post Office Savings Bank Act No. 493 B	to encourage and facilitate personal saving among Kenyans	National Treasury
210.	Capital Markets Authority	Capital Markets Act, Cap 485A	Promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya	National Treasury
211.	Insurance Regulatory Authority	Insurance act, Cap 487	Regulate the insurance industry	National Treasury
212.	Retirement Benefits Authority	Retirement Benefits Act, No. 3 of 1997	Regulate and supervise management of retirement benefit schemes	National Treasury

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
213.	Kenya Revenue Authority (KRA)	Kenya Revenue Authority Act, Cap 469	assessment and collection of revenue, for the administration and enforcement of the laws relating to revenue and to provide for connected purposes	National Treasury
214.	Deposits Protection Fund Board (now Kenya Deposit Protection Authority)	Banking Act, Cap 488 (also under the Kenya Deposit Insurance Act, No. 10 of 2012)	Provide a deposits insurance system and for the receivership and liquidation of deposit taking institutions	National Treasury
215.	Financial Reporting Centre	Proceeds of Crime and Anti-Money Laundering Act, 2009	Assist in the identification of the proceeds of crime and the combating of money laundering.	National Treasury
216.	Kenya Accountants & Secretaries National Examination Board (KASNEB)	Accountants Act, No. 15 of 2008	Examination of accountants and company secretaries and matters incidental thereto	National Treasury
217.	Kenya Trade Network Agency	Executive Order, Legal Notice No 6 of 2011	to implement, operationalise and manage the Kenya Electronic Single Window System and to facilitate trade in Kenya.	National Treasury
218.	Policy Holders Compensation Fund	Insurance Act, Cap 487 through the Insurance (Policyholders Compensation Fund) Regulations, 2010	To protect policy holders of an insolvent insurance company by providing them with compensation for unsettled claims	National Treasury
219.	Unclaimed Financial Assets Authority	Unclaimed Financial Assets Act, No. 40 of 2011	administer unclaimed financial assets	National Treasury
220.	Investor Compensation Fund Board	Capital Markets Cap 485	Administer Investor Compensation Fund	National Treasury
221.	Competition Authority	Competition Act, No. 12 of 2010	To promote and safeguard competition in the national economy; and to protect consumers from unfair and misleading market conduct	National Treasury
222.	Public Procurement Oversight Authority	Public Procurement and Disposal Act, No. 3 of 2005	(a) To ensure procurement procedures are complied with as established under the Public Procurement and Disposal Act, 2005 and Regulations, 2006. (b) Monitoring the overall functioning of the public procurement system including accountability and documentation of the procured items.	National Treasury
223.	Kenya Institute of Supplies Examination Board	Supplies practitioners management Act No. 17 of 2007	Prescribe and regulate syllabuses of instruction for professional supplies certification and conduct examinations for professional supplies certification	National Treasury
224.	Kenya Institute of Supplies Management	Supplies Practitioners Management Act No.17 of 2007	A national body for professionals in the practice of procurement and supplies management in Kenya for promoting learning, development of best practices, and application of the same to the practice of procurement and supply chain management	National Treasury
225.	Institute of Certified Secretaries of Kenya	Certified Public Secretaries of Kenya Cap 534	Promote standards of professional competence and practice amongst members of the Institute; Promote research into the subject of secretarial practices and finance and related matters and the publication of books, periodicals, journals and articles in connection therewith; Promote the international recognition of the Institute; Advise the Examination Board on matters relating to examination standards and policies	National Treasury

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
226.	Institute of Certified Public Accountants of Kenya	Accountants Cap 15	Promote standards of professional competence and practice amongst members of the Institute; Promote research into the subjects of accountancy and finance and related matters, and the publication of books, periodicals, journals and articles in connection therewith; Promote the international recognition of the Institute; Advise the Examinations Board on matters relating to examinations standards and policies; Advise the Minister on matters relating to financial accountability in all sectors of the economy;	National Treasury
227.	Local Authorities Provident Fund	Local Authorities Provident Fund Act, Cap 272	supervise, control and manage all the assets of the Fund	National Treasury
228.	Kenya Copyright Board	The Copyright Act , 2001	Oversee provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts and for connected purposes	Office Of The Attorney General & Department Of Justice
229.	National Council for Law Reporting	National Council for Law Reporting Act, No. 11 of 1994	To Publish the Kenya Law Reports and related publications and to revise, consolidate and publish the Laws of Kenya	Office Of The Attorney General & Department Of Justice
230.	Kenya Law Reform Commission	Kenya Law Reform Commission Act, No. 19 of 2013	Review all the law and recommend its reform	Office Of The Attorney General & Department Of Justice
231.	Nairobi Centre for International Arbitration	Nairobi Centre for International Arbitration Act, No. 26 of 2013	Provide for mechanisms for alternative dispute resolution	Office Of The Attorney General & Department Of Justice
232.	Council for Legal Education	Legal Education Act, No. 27 of 2012	Regulation and licensing of legal education providers and for connected purposes	Office of The Attorney General & Department Of Justice
233.	Kenya School of Law	Kenya School of Law Act, 2011	public legal education provider responsible for the provision of professional legal training as an agent of the Government	Office of The Attorney General & Department Of Justice
234.	National Crime Research Center	The National Crime Research Act Chapter 62	Carry out research into causes of crime and its prevention and to disseminate research findings and recommendations to agencies of Government concerned with administration of criminal justice with a view to assisting them with their policy formulation and planning.	Office Of The Attorney General & Department Of Justice
235.	Law Society of Kenya	Law Society of Kenya Cap 18	to maintain and improve the standards of conduct and learning of the legal profession in Kenya; (b) to facilitate the acquisition of legal knowledge by members of the legal profession and others; (c) to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Kenya; (d) to represent, protect and assist members of the legal profession in Kenya in respect of conditions of practice and otherwise; (e) to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law;	Office Of The Attorney General & Department Of Justice
236.	Kenya Academy of Sports	Sports Act, No. 25 of 2013	Establish and manage sports training academies	Sports, Culture & The Arts
237.	National Museums of Kenya	National Museums and Heritage Act, Cap No. 6 of 2006	to collect, preserve, study, document and present Kenya's past and present cultural and natural heritage for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these	Sports, Culture & The Arts

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
			resources for the benefit of Kenya and the world, for now and posterity	
238.	National Youth Council	National Youth Council Act 2009	Regulate and coordinate youth activities and policies	Sports, Culture & The Arts
239.	The Kenya Cultural Center	The Kenya Cultural Center Cap. 218	Provide a center for use and enjoyment of citizens of Kenya without distinction as to race, colour or creed	Sports, Culture & The Arts
240.	Sports Kenya	Sports Act, No. 25 Of 2013	establishment of sports institutions, facilities	Sports, Culture & The Arts
241.	Kenya Film Classification Board	Films and Stage Plays Act, Cap 222	Regulating and controlling the making and exhibition of cinematograph films, for the licensing of stage plays, theatres and cinemas	Sports, Culture & The Arts
242.	Kenya National Library Service (KNLS)	Kenya National Library Services Board Act, Cap 225	Provide public library services	Sports, Culture & The Arts
243.	Kenya Film Commission	State Corporations Act, Cap 446 through Kenya Film Commission Order, 2005	Development, and promotion of the film industry in Kenya	Sports, Culture & The Arts Technology
244.	Kenya Rural Roads Authority	Kenya Roads Act, Act No. 2 of 2007	charged with the responsibility for the management, development, rehabilitation and maintenance of rural roads, including	Transport & Infrastructure
245.	Kenya Urban Roads Authority	Kenya Roads Act, Act No. 2 of 2007	To collect, preserve, study, document and present Kenya's past and present cultural and natural heritage. This is for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now and posterity	Transport & Infrastructure
246.	Kenya National Shipping Line	Companies Act, Cap 486 Merchant Shipping Act, 1989	Provision of ocean freight between Kenya and global world	Transport & Infrastructure
247.	Kenya Ports Authority (KPA)	Kenya Ports Authority Act, Cap 391	Provide a coordinated system of ports and facilities relating thereto.	Transport & Infrastructure
248.	Kenya Railways Corporation (KRC)	Kenya Railways Corporation Act, Cap 397	To provide rail and inland waterways transport	Transport & Infrastructure
249.	Kenya Airports Authority (KAA)	Kenya Airports Authority Act, Cap 395	Facilitate, develop and operate infrastructure for aviation	Transport & Infrastructure
250.	Kenya Ferry Services Ltd (KFS)	Companies Act, Cap 486	Carry on a ferry boat service	Transport & Infrastructure
251.	Kenya National Highways Authority (KeNHA)	Kenya Roads Act, Act No. 2 of 2007	Management, development, rehabilitation and maintenance of national roads	Transport & Infrastructure
252.	Kenya Civil Aviation Authority (KCAA)	Civil Aviation Act, Cap 394	To plan, develop, manage, regulate and operate a safe, economical, and efficient civil aviation system in Kenya	Transport & Infrastructure
253.	Kenya Maritime Authority	State Corporations Act, Cap 446 through Kenya Maritime Authority Order, 2004	Regulate, co-ordinate and oversee maritime affairs	Transport & Infrastructure

#	STATE CORPORATION	ENABLING LEGISLATION	MANDATE	MINISTRY
254.	National Transport & Safety Authority	National Transport and Safety Authority Act, 2012	regulate the road transport system	Transport & Infrastructure
255.	Physical Planners Registration Board	Physical Planners Act No. 3 of 1996	Register eligible persons to practice as physical planners Set and conduct examinations for purpose of registration Enquire into professional misconduct of members	Transport & Infrastructure
256.	Engineers Registration board	ACT NO. 43 of 2011 - Engineers Act	Receive, consider, make decisions on applications for registration and register approved applications Keep and maintain the Register; Publish the names of registered and licensed persons under this Act; Issue licences to qualified persons under the provisions of this Act; Publish and disseminate materials relating to its work and activities; Carry out inquiries on matters pertaining to registration of engineers and practice of engineering	Transport & Infrastructure
257.	Architects and Quantity Surveyors Registration Board	Architects and Quantity Surveyors Cap 525	Registrar shall keep and maintain a register in which the name of every person, being suitably qualified under this Act, shall be entered as soon as is practicable after he is accepted by 'the Board for registration, showing against his name such particulars as the Board may, from time to time, direct	Transport & Infrastructure
258.	Kenya Roads Board (KRB)	Kenya Roads Board Act, Cap 408	oversee the road network in e Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto, and specifically	Transport & Infrastructure
259.	Simlaw Seeds Kenya Ltd (Subsidiary of Kenya Seed Co.)	Companies Act, Cap 486	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
260.	Simlaw Seeds Uganda Ltd. (Subsidiary of Kenya Seed Co.)	Companies Act Cap. 486	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
261.	Simlaw Seeds Tanzania (Subsidiary of Kenya Seed Co.)	Companies Act Cap. 486	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
262.	Lands Limited (subsidiary of Agricultural Development Corporation)	Companies Act Cap. 486	Owns land for Agricultural Development Corporation	Agriculture, Livestock & Fisheries

Appendix 5 – Reclassification of Government Owned Entities as of October 9, 2013

Purely Commercial State Corporations

#	State Corporation	Enabling Legislation	Mandate	Sector
1.	Agro-Chemical and Food Company	Companies Act, Cap 486	Carry on all or any other businesses of manufacturing related to alcohol, export and importation.	Agriculture, Livestock & Fisheries
2.	Kenya Meat Commission	Kenya Meat Commission Act, Cap 363	Operating abattoirs and purchasing and processing of meat products	Agriculture, Livestock & Fisheries
3.	Muhoroni Sugar Company Ltd	Companies Act, Cap 486	Production of sugar	Agriculture, Livestock & Fisheries
4.	Nyayo Tea Zones Development Corporation	State Corporations Act, Cap 446 through Nyayo Tea Zones Development Corporation Order	to promote forest conservation by providing buffer zones of tea and assorted tree species to check human encroachment into forestland. This is achieved through the establishment of tea and assorted tree buffer belts around those forests.	Agriculture, Livestock & Fisheries
5.	South Nyanza Sugar Company Limited	State Corporations Act (Cap 446)	Increase national sugar production and reduce dependence on sugar imports; create employment opportunities and enhance regional development	Agriculture, Livestock & Fisheries
6.	Chemilil Sugar Company Ltd	Companies Act, Cap 486	Crush sugar cane and manufacture sugar and related products.	Agriculture, Livestock & Fisheries
7.	Nzoia Sugar Company Ltd	Companies Act, Cap 486	To crush sugar cane and manufacture sugar and related products	Agriculture, Livestock & Fisheries
8.	Simlaw Seeds Kenya	Companies Act, Cap 486	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
9.	Simlaw Seeds Tanzania	Companies Act	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
10.	Simlaw Seeds Uganda	Companies Act	Production and distribution of horticultural seeds	Agriculture, Livestock & Fisheries
11.	Kenya National Trading Corporation (KNTC)	Companies Act, Cap 486	Promoting, growing wholesale, and retail trade through efficiently trade in quality products and services to ensure balance of supply and demand in the Country's distribution networks, while promoting e-commerce and global trade with an aim to maximizing stakeholder's value.	East African Affairs, Commerce & Tourism
12.	Kenya Safari Lodges and Hotels Ltd. (Mombasa Beach Hotel, Ngulia Lodge, Voi Lodge)	Companies Act Cap. 486	Provision of premium hotel and lodge accommodation, current conference and business meeting venues, customized beach and safari experiences as well as high value niche products	East African Affairs, Commerce & Tourism
13.	Golf Hotel Kakamega	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
14.	Kabarnet Hotel Limited	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
15.	Mt Elgon Lodge	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
16.	Sunset Hotel Kisumu	Companies Act Cap. 486	Hotel and hospitality	East African, Commerce & Tourism
17.	Jomo Kenyatta Foundation	Companies Act, Cap. 486, Laws of Kenya (limited by guarantee)	Advance education and knowledge for poverty alleviation through quality publishing and provision of scholarships	Education, Science & Technology
18.	Jomo Kenyatta University Enterprises Ltd.	Companies Act Cap. 486	Undertake activities for various clients such as MSMEs, banks, parastatals, corporations and government ministries such as training, development of tailor-made curricula, course material development and consultancy services in collaboration with technical JKUAT departments	Education, Science & Technology
19.	Kenya Literature Bureau (KLB)	Kenya Literature Bureau Act, Cap 209	Publishing, printing and distributing literary, educational, cultural and scientific books, periodicals, journals, magazines, digital and electronic material and works of every description	Education, Science & Technology

#	State Corporation	Enabling Legislation	Mandate	Sector
20.	Rivatex (East Africa) Ltd.	Companies Act Cap. 486	Training, consultancy, research, extension and manufacture of textile products	Education, Science & Technology
21.	School Equipment Production Unit		Design, manufacture, supply and distribute science materials and apparatus for education	Education, Science & Technology
22.	University of Nairobi Enterprises Ltd.	Companies Act Cap. 486	The commercial arm of the University of Nairobi charged with the responsibility of promoting and coordinating income-generating activities in the University	Education, Science & Technology
23.	University of Nairobi Press (UONP)	Companies Act Cap. 486	Publishing	Education, Science & Technology
24.	Development Bank of Kenya Ltd.	Companies Act, Cap 486 Merchant Shipping Act, 1989	Development Finance	Industrialization & Enterprise Development
25.	Kenya Wine Agencies Ltd (KWAL)	Companies Act, Cap 486	Produce and distribute wines and spirits to both domestic and international markets	Industrialization & Enterprise Development
26.	KWA Holdings	Companies Act, Cap 486	Holding Company	Industrialization & Enterprise Development
27.	New Kenya Co-operative Creameries	Companies Act Ca. 486	Milk processing and production of dairy products	Industrialization & Enterprise Development
28.	Yatta Vineyards Ltd	Companies Act Cap. 486	Grape farming	Industrialization & Enterprise Development
29.	National Housing Corporation	Housing Act, Cap 117	Play a principal role in the implementation of the Government's Housing Policies and Programmes.	Lands, Housing & Urban Development
30.	Research Development Unit Company Ltd	Companies Act Cap. 486	Research on housing and housing materials	Lands, Housing & Urban Development
31.	Consolidated Bank of Kenya	Companies Act, Cap 486	Provide banking services	National Treasury
32.	Kenya National Assurance Co. (2001) Ltd	Companies Act, Cap 486	Life assurance company to take over the assets and liabilities of the Closed Life Fund of the Kenya National Assurance Company Limited (under Liquidation).	National Treasury
33.	Kenya Reinsurance Corporation Ltd	Kenya Reinsurance Corporation Act, Cap 487	Undertake and transact in any manner reinsurance and insurance business in and out of Kenya	National Treasury
34.	Kenya National Shipping Line	Companies Act, Cap 486 Merchant Shipping Act, 1989	Provision of ocean freight between Kenya and global world	Transport & Infrastructure

State Corporations with Strategic Functions

#	State Corporation	Enabling Legislation	Mandate	Sector
1.	Kenya Animal Genetics Resource Centre	State Corporations Act, Cap 446 under Kenya Animal Genetic Resources Centre Order, 2011	Establish a national livestock resources gene bank	Agriculture, Livestock & Fisheries
2.	Kenya Seed Company (KSC)	Companies Act, Cap 486	Produce and market top quality seeds. Government seed bank	Agriculture, Livestock & Fisheries
3.	Kenya Veterinary Vaccine Production Institute	State Corporations Act, Cap 446 of the laws of Kenya through legal notice No. 223 of 4th June, 1990.	Produce safe, efficacious and affordable veterinary vaccines through undertaking research, providing information, marketing and distribution for improvement of the livestock industry.	Agriculture, Livestock & Fisheries
4.	National Cereals & Produce Board (NCPB)	National Cereals and Produce Board Act, Cap 338	Market stabilization, famine relief and strategic grain reserve	Agriculture, Livestock & Fisheries
5.	Kenyatta International Convention Centre	Tourism Act, Cap 28 of 2011	Promote business of meetings, conferences and exhibitions	East African Affairs, Commerce & Tourism
6.	Geothermal Development Company (GDC)	Companies Act, Cap 486	Promote rapid development of geothermal resources in Kenya through surface exploration and drilling for steam. Avail steam to power plant developers for electricity generation. To manage the geothermal reservoirs- to ensure constant supply of steam for power generation To promote alternative uses of geothermal resources other than electricity generation. These include green house heating, drying of grains, pasteurizing milk, cooling and heating of rooms, among others.	Energy & Petroleum
7.	Kenya Electricity Generating Company (Kengen)	Companies Act, Cap 486	Electric power generation	Energy & Petroleum
8.	Kenya Electricity Transmission Company (KETRACO)	Companies Act, Cap 486	Develop new high voltage electricity transmission infrastructure forming the backbone of the National Transmission Grid	Energy & Petroleum
9.	Kenya Pipeline Company (KPC)	Companies Act, Cap 486	Provide the most economical and modern way of transporting and storing petroleum products	Energy & Petroleum
10.	Kenya Power and Lighting Company (KPLC)	Companies Act, Cap 486	transmits, distributes and retails electricity to customers throughout Kenya	Energy & Petroleum
11.	National Oil Corporation of Kenya	Companies Act, Cap 481	Participation in up and downstream aspects of petroleum industry	Energy & Petroleum
12.	National Water Conservation and Pipeline Corporation	Water Act 2002	Development of water infrastructure and supply of water	Environment, Water & Natural Resources
13.	Numerical Machining Complex	Companies Act, 486	the commercial production of steel, engineering design, and development of machinery and components.	Industrialization & Enterprise Development
14.	Kenya Broadcasting Corporation	Kenya Broadcasting Corporation Act, Cap 221	National Broadcasting	Information, Communication & Technology
15.	Postal Corporation of Kenya	Postal Corporation Act, Cap 411	responsible for provision of postal service in Kenya to encourage and facilitate personal saving	Information, Communication & Technology
16.	Kenya Development Bank (After merger of TFC, ICDC, KIE, IDB, AFC)	To be enacted	Provide long and medium term finance for large scale investments and development projects in tourism, industry agriculture	National Treasury
17.	*Kenya EXIM Bank	To be enacted	Finance exports and imports	National Treasury
18.	Kenya Post Office Savings Bank	Kenya Post Office Savings Bank Act No. 493 B	to encourage and facilitate personal saving among Kenyans	National Treasury
19.	Kenya Airports Authority (KAA)	Kenya Airports Authority Act, Cap 395	Facilitate, develop and operate infrastructure for aviation	Transport & Infrastructure

#	State Corporation	Enabling Legislation	Mandate	Sector
20.	Kenya Ports Authority (KPA)	Kenya Ports Authority Act, Cap 391	Provide a coordinated system of ports and facilities relating thereto.	Transport & Infrastructure
21.	Kenya Railways Corporation (KRC)	Kenya Railways Corporation Act, Cap 397	To provide rail and inland waterways transport	Transport & Infrastructure

State Agencies - Executive Agencies

#	Executive Agency	Enabling Legislation	Mandate	Sector
1.	*Biashara Kenya (After merging Small and Micro enterprises Authority, Women Fund, Uwezo Fund and Youth Enterprises Development Authority)	To be enacted	Promotion, Development and regulation of small and micro enterprises	Industrialization & Enterprise Development
2.	*Internal Revenue Service (After transfer of Customs department from KRA)	Kenya Revenue Authority Act, Cap 469	Assessment and collection of revenue, for the administration and enforcement of the laws relating to taxation and connected purposes	National Treasury
3.	*Kenya Intellectual Property Service (After merging Kenya Copyright Board, Kenya Industrial Property Institute, and Anti-Counterfeit Agency)	To be enacted	Promotion and protection of intellectual property and copyrights	Industrialization & Enterprise Development
4.	*Kenya Investment Promotion Service (After merging KTB, EPC, Brand Kenya Board & KenInvest)	To be developed	Promoting and marketing Kenya as tourist and investment destination	Foreign Affairs & International Trade
5.	*Konza Technopolis Authority	Konza Technopolis Development Order, 2012	Plan, develop, regulate and manage Konza Techno City as a world class, mixed use and sustainable city.	Information, Communication & Technology
6.	Bomas of Kenya	Companies Act, Cap 486	Preserve, maintain and promote the rich diverse cultural values of various ethnic groups of Kenya	East African, Commerce & Tourism
7.	3. Water Services Trust Fund	Water Act, Cap 372	Provide financial support for improved access to water and sanitation in areas without adequate services including supporting capacity building activities and initiatives that aim at enabling communities to plan, implement, manage, operate and sustain water services-by creating awareness and disseminating information regarding community management of water services, and encouraging their active participation in implementation and management.	Environment, Water & Natural Resources
8.	4. Leather Development Council	State Corporations Act, Cap 446 under Kenya Leather Development Council Order, 2011	Promote, direct, coordinate and harmonize all activities in the leather subsector	Industrialization and Enterprise Development
9.	Agricultural Development Corporation	Agricultural Development Corporation Act, Cap 444 of 1986	Promotion and execution of agricultural schemes and reconstruction in Kenya by initiating, assisting or expansion of agricultural undertaking lands and enterprises. The Government land bank for agriculture land	Agriculture, Livestock & Fisheries
10.	Anti-Female Genital Mutilation Board	Prohibition of Female Genital Mutilation No. 32 of 2011	Design surveys and coordination public awareness programmes Advise the government on matters relating to female genital mutilation Design and formulate a policy on the planning, financing and coordinating all activities relating to female genital mutilation	Devolution & Planning
11.	Constituency Development Fund	Constituencies Development Fund Act, No. 30 of 2013	Ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of infrastructural development, wealth	Devolution & Planning

#	Executive Agency	Enabling Legislation	Mandate	Sector
			creation and in the fight against poverty at the constituency level.	
12.	Crops Development and Promotion Service (new)	To be developed	Promotion and development of scheduled crops	Agriculture, Livestock & Fisheries
13.	Customs and Boarder Security Service (successor to the Kenya Citizens and Foreign Nationals Management Service)	To be developed	Customs service, implementation of policies, laws and other matters relating to immigration, births, deaths, identification and registration of persons including issue of passports	Interior and Coordination of National Government
14.	Drought Management Authority	State Corporations Act, Cap 446 through National Drought Management Authority Order, 2011	On its own or in association with other authorities or persons, establish mechanisms to ensure that drought does not become famine and the impacts of climate change are sufficiently mitigated	Devolution & Planning
15.	Export Processing Zones Authority (EPZA)	Export Processing Zones Act, Cap 517	promotion and facilitation of export oriented investments and the development of enabling environment for such investment	Industrialization & Enterprise Development
16.	Financial Reporting Centre	Proceeds of Crime and Anti-Money Laundering Act, 2009	Assist in the identification of the proceeds of crime and the combating of money laundering.	National Treasury
17.	Fisheries Development and Promotion Service (new)	To be developed	Promotion and development of fish farming	Agriculture, Livestock & Fisheries
18.	Higher Education Loans Board	Higher Education Loans Board Act, 1995.	Management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya	Education, Science & Technology
19.	Information and Communications Technology Authority	State Corporations Act, Cap 446 through Information and Communications Technology Authority Order, No. 183 of 2013	Advise the Government on all relevant matters pertaining to the development, co-ordination and promotion of information and communications technology industries in the country.	Information, Communication & Technology
20.	Investor Compensation Fund Board	Capital Markets Cap 485	Administer Investor Compensation Fund	National Treasury
21.	Kenya Academy of Sports	Sports Act, No. 25 of 2013	Establish and manage sports training academies	Sports, Culture & The Arts
22.	Kenya Accountants & Secretaries National Examination Board (KASNEB)	Accountants Act, No. 15 of 2008	Examination of accountants and company secretaries and matters incidental thereto	National Treasury
23.	Kenya Deposit Protection Authority	Banking Act, Cap 488 (also under the Kenya Deposit Insurance Act, No. 10 of 2012)	Provide a deposits insurance system and for the receivership and liquidation of deposit taking institutions	National Treasury
24.	Kenya Ferry Services Ltd (KFS)	Companies Act, Cap 486	Carry on a ferry boat service	Transport & Infrastructure
25.	Kenya Film Development Service	State Corporations Act, Cap 446 through Kenya Film Commission Order, 2005	Development, and promotion of the film industry in Kenya	Sports, Culture & The Arts Technology
26.	Kenya Institute of Curriculum Development	Kenya Institute of Curriculum Development Act, 2013	Advise the Government on matters pertaining to curriculum development, and implement the policies relating to curriculum development in basic and tertiary education and training	Education, Science & Technology
27.	Kenya Law Reform Commission	Kenya Law Reform Commission Act, No. 19 of 2013	Review all the law and recommend its reform	Office Of The Attorney General & Department Of Justice
28.	Kenya Medical Supplies Authority	The Kenya Medical Supplies Authority Act, No. 20 of 2013	Procure, warehouse and distribute drugs and medical supplies	Health
29.	Kenya National Bureau of Statistics	Statistics Act, No. 4 of 2006	Collecting, analysing and disseminating statistical data in Kenya and shall be the custodian of official statistical information	Devolution & Planning

#	Executive Agency	Enabling Legislation	Mandate	Sector
30.	Kenya National Examination Council (KNEC)	Kenya National Examinations Council Act, 2012	Conduct of examinations at basic and tertiary levels	Education, Science & Technology
31.	Kenya National Highways Authority (KeNHA)	Kenya Roads Act, Act No. 2 of 2007	Management, development, rehabilitation and maintenance of national roads	Transport & Infrastructure
32.	Kenya National Innovation Agency	Science, Technology and Innovation Act, NO. 28 OF 2013	Develop and manage the Kenya National Innovation System, and for that purpose to institutionalize linkages between universities, research institutions, the private sector, the Government, and other actors in that System; and cause the creation of science and innovation parks, institutes or schools or designate existing institutions as centres of excellence in priority sectors	Education Science and Technology
33.	Kenya Ordnance Factories Corporation	State Corporations Act Cap 446 through Legal Notice No. 125 of 23 July 1997	Manufacture military Hardware, Machinery and Equipment	Defence
34.	Kenya Roads Board (KRB)	Kenya Roads Board Act, Cap 408	Oversee the road network in e Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Minister on all matters related thereto, and specifically	Transport & Infrastructure
35.	Kenya Trade Network Agency	Executive Order, <u>Legal Notice No 6 of 2011</u>	Implement, operationalise and manage the Kenya Electronic Single Window System and to facilitate trade in Kenya.	National Treasury
36.	Kenya Wildlife and Forestry Conservation Service	To be enacted	Protection and management of wildlife, forests and water towers	Environment, Water & Natural Resources
37.	Kenyatta National Hospital	State Corporations Act, Cap 446 through Kenyatta National Hospital Board order, 1987	Provide specialized healthcare, facilitate training and research and participate in National Health Planning and Policy for the benefit of the nation and the region at large	Health
38.	LAPSSET Corridor Development Authority	State Corporations Act, Cap 446 under LAPSSET Corridor Development Authority, Order, 2013	Plan, co-ordinate and sequence LAPSSET Corridor projects in collaboration with Implementing ministries and agencies	Executive Office of the President
39.	Livestock Development and Promotion Service (new)	To be enacted	Promotion and development of livestock and dairy industry	Agriculture, Livestock & Fisheries
40.	Local Authorities Provident Fund	Local Authorities Provident Fund Act, Cap 272	Supervise, control and manage all the assets of the Fund	National Treasury
41.	Moi Teaching and Referral Hospital	State Corporations Act, Cap 446	Provision of Quality Healthcare, Training and Research.	Health
42.	Nairobi Centre for International Arbitration	Nairobi Centre for International Arbitration Act, No. 26 of 2013 to:	Provide for mechanisms for alternative dispute resolution	Office Of The Attorney General & Department Of Justice
43.	National Aids Control Council	State Corporations Act through National AIDS Control Council Order, 1999,	Coordinate stakeholders in the multisectoral response to HIV and AIDS in Kenya.	Health
44.	National Cancer Institute of Kenya	Cancer Prevention and Control Act, 2012	Promote public awareness about the causes, consequences, means of prevention and control of cancer	Health
45.	National Coordinating Agency for Population & Development	State Corporations Act through The National Coordinating Agency For Population and Development Order, 2004	Develop policies relating to population	Devolution & Planning
46.	National Council for Law Reporting	National Council for Law Reporting Act, No. 11 of 1994	Publish the Kenya Law Reports and related publications and to revise, consolidate and publish the Laws of Kenya	Office Of The Attorney General & Department Of Justice
47.	National Council for Persons with Disabilities	Persons with Disability Act, 2003	Formulate and implement policies that are geared towards mainstreaming Persons with	Labour, & Social Security Services

#	Executive Agency	Enabling Legislation	Mandate	Sector
			Disabilities in to the national economy	
48.	National Hospital Insurance Fund	National Hospital Insurance Fund Act, No. 9 of 1998	Provide health insurance to Kenyans over the age of 18	Health
49.	National Industrial Training Authority	Industrial Training Act Cap 237	Promote the highest standards in the quality and efficiency of industrial training in Kenya and ensure an adequate supply of properly trained manpower at all levels in industry	Labour, & Social Security Services Move to Industrialization and Enterprise Development
50.	National Irrigation Board	Irrigation Act, Cap 347	Development, control and improvement of national irrigation schemes in Kenya,	Agriculture, Livestock & Fisheries
51.	National Museums of Kenya	National Museums and Heritage Act, Cap No. 6 of 2006	Collect, preserve, study, document and present Kenya's past and present cultural and natural heritage for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now and posterity	Sports, Culture & The Arts
52.	National Quality Control Laboratories	Pharmacy and poisons Act Cap. 244	Examination and testing of drugs and any material or substance from or with which and the manner in which drugs may be manufactured, processed or treated and ensuring the quality control of drugs and medicinal substances	Health
53.	National Social Security Fund Board of Trustees	National Social Security Fund Act, Cap 258	Provide for contributions to and the payment of benefits out of the Fund; and for matters connected therewith and incidental	Labour, & Social Security Services
54.	National Youth Council	National Youth Council Act 2009	Regulate and coordinate youth activities and policies	Sports, Culture & The Arts
55.	Nuclear Electricity Board	Kenya Nuclear Electricity Board Order, 2012.	Promote and expedite the development of nuclear electricity in Kenya	Energy and Petroleum
56.	Policy Holders Compensation Fund	Insurance Act, Cap 487 through the Insurance (Policyholders Compensation Fund) Regulations, 2010	Protect policy holders of an insolvent insurance company by providing them with compensation for unsettled claims	National Treasury
57.	Sports Kenya	Sports Act, No. 25 Of 2013	Establishment of sports institutions, facilities	Sports, Culture & The Arts
58.	The Kenya Cultural Center	The Kenya Cultural Center Cap. 218	Provide a center for use and enjoyment of citizens of Kenya without distinction as to race, colour or creed	Sports, Culture & The Arts
59.	Tourism Fund	Tourism Act 2011	Control and administration of the training and tourism development levy fund	East African Affairs, Commerce & Tourism
60.	Unclaimed Financial Assets Authority	Unclaimed Financial Assets Act, No. 40 of 2011	Administer unclaimed financial assets	National Treasury
61.	Water Resources Management Authority	Water Act, 2002, Cap 372	Develop principles, guidelines and procedures for the allocation of water resources; monitor, and from time to time reassess, the national water resources management strategy; receive and determine applications for permits for water use; monitor and enforce conditions attached to permits for water use; regulate and protect water resources quality from adverse impacts; and manage and protect water catchments;	Environment, Water & Natural Resources
62.	National Campaign Against Drug Abuse Authority	National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012	Control of alcohol and drug abuse	Interior & Coordination Of National Government

State Agencies - Independent Regulatory Agencies

#	Regulatory Agency	Enabling Legislation	Mandate	Sector
1.	Agricultural, Fisheries and Food Authority	Agriculture, Fisheries and Food Authority Act, No. 13 of 2013	Regulation agriculture sector	Agriculture, Livestock & Fisheries
2.	Commission for University Education	Universities Act, No. 42 of 2012	The establishment, accreditation and governance of universities	Education, Science & Technology
3.	Communications Commission of Kenya	Kenya Information and Communications Act, Cap 411A	To licence and regulate postal, information and communication services	Information, Communication & Technology
4.	Competition Authority	Competition Act, No. 12 of 2010	To promote and safeguard competition in the national economy; and to protect consumers from unfair and misleading market conduct	National Treasury
5.	Council for Legal Education	Legal Education Act, No. 27 of 2012	Regulation and licensing of legal education providers and for connected purposes	Office of The Attorney General & Department Of Justice
6.	Energy Regulatory Commission	Energy Act, Cap 12	Regulate the energy sector	Energy & Petroleum
7.	*Health Services Regulatory Authority	To be enacted	Regulation of health services	Health
8.	Kenya Bureau of Standard (KBS)	Standards Act, Cap 496	Promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice	Industrialization & Enterprise Development
9.	Kenya Civil Aviation Authority (KCAA)	Civil Aviation Act, Cap 394	Plan, develop, manage, regulate and operate a safe, economical, and efficient civil aviation system in Kenya	Transport & Infrastructure
10.	Kenya Film Regulatory Service	Films and Stage Plays Act, Cap 222	Regulating and controlling the making and exhibition of cinematograph films, for the licensing of stage plays, theatres and cinemas	Sports, Culture & The Arts
11.	Kenya Maritime Authority	State Corporations Act, Cap 446 through Kenya Maritime Authority Order, 2004	Regulate, co-ordinate and oversee maritime affairs	Transport & Infrastructure
12.	Kenya National Accreditation Service	State Corporations Act, Cap 446 through Kenya Accreditation Service Order, 2009	Regulation of accreditation of conformity assessment bodies	Industrialization & Enterprise Development
13.	Kenya Plant and Animal Health Inspectorate Service (After taking over functions of National Biosafety Authority)	To be enacted	Regulate matters relating to plant protection, seeds and plant varieties; administer and enforce sanitary and phytosanitary measures; support the administration and enforcement of food safety measures; establish service laboratories to monitor quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce	Agriculture, Livestock & Fisheries
14.	* Livestock Regulatory Authority	To be enacted	Regulation of livestock production, livestock products, and livestock industry	Agriculture, Livestock & Fisheries
15.	National Commission for Science, Technology and Innovations	Science and Technology and innovation Act, 2013	Regulate and assure quality in science, technology and innovation sector and advise the government in related matters	Education, Science & Technology
16.	National Construction Authority	National Construction Authority Act No. 41 of 2011	Regulate and coordinate the construction industry for sustainable social and economic development	Lands Housing & Urban Development
17.	National Environmental Management Authority (NEMA)	Environmental Management and Coordination Act, No. 8 1999	Exercise general supervision and co-ordination over all matters relating to the environment	Environment, Water & Natural Resources
18.	National Land Transport & Safety Authority	National Transport and Safety Authority Act, 2012	Regulate Road and Rail transport system	Transport & Infrastructure
19.	Public Benefits Organizations Regulatory Authority	Public Benefits Organizations Act, 2013	Register public benefit organizations, maintain a register of the organizations	Devolution & Planning

#	Regulatory Agency	Enabling Legislation	Mandate	Sector
			and interpret the national policy on public benefit organizations so as to assist in its smooth implementation and observance by Government ministries, departments and agencies	
20.	Public Procurement Oversight Authority	Public Procurement and Disposal Act, No. 3 of 2005	Ensure procurement procedures are complied with as established under the Public Procurement and Disposal Act, 2005 and Regulations, 2006. Monitoring the overall functioning of the public procurement system including accountability and documentation of the procured items.	National Treasury
21.	Technical and Vocational Education and Training Authority	Technical And Vocational Education And Training Act, No. 29 of 2013	Governance and management of institutions offering technical and vocational education and training; to provide for coordinated assessment, examination and certification	Education, Science & Technology
22.	Tourism Regulatory Authority	Tourism Act 2011	Formulate guidelines and prescribe measures for sustainable tourism throughout the country. Regulate tourism activities and services countrywide, in accordance with the national tourism strategy. Register, licence and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services.	East African Affairs, Commerce & Tourism
23.	Water Services Regulatory Board	Water Act, Cap 372	Promotion and regulation of water provision services	Environment, Water & Natural Resources
24.	*Financial Supervisory Council (After merger of Capital Markets Authority, Insurance Regulatory Authority, Retirement Benefits Authority, and SACCO Societies Regulatory Authority)	To be enacted	Regulation of financial services	National Treasury
25.	* Mining and Oil Exploration Regulatory Service	To be developed	Regulate the mining sector	Mining

State Agencies - Research Institutions, Public Universities, Tertiary Education and Training Institutions

#	State Corporation	Enabling Legislation	Mandate	Sector
1.	Bukura Agricultural College	Bukura Agricultural College Act of 1999	Provide education in agriculture and other auxiliary subjects	Agriculture, Livestock & Fisheries
2.	Chuka University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
3.	Cooperative University College	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
4.	Dedan Kimathi University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
5.	Egerton University	Egerton University Act, Cap 214	Provide and advance university education and training	Education, Science & Technology
6.	Embu University College	University of Nairobi Act of 2011	Provide and advance university education and training	Education, Science & Technology
7.	Garissa University College	The Universities Act No. 42 of 2012	University Education	Education, Science & Technology
8.	Jaramogi Oginga Odinga University of Science and Technology	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
9.	Jomo Kenyatta University of Agriculture And Technology	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
10.	Karatina University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology

#	State Corporation	Enabling Legislation	Mandate	Sector
11.	Kenya Agricultural and Livestock Research Organization	Kenya Agricultural and Livestock Act, 2013	To undertake research in agriculture and allied areas	Agriculture, Livestock & Fisheries
12.	Kenya Forestry Research Institute	Science and Technology, Act Cap 250	Research in forestry and allied natural resources	Environment, Water & Natural Resources
13.	Kenya Industrial Research & Development Institute	Science and Technology Act, Cap 250	Research in the fields of Civil Engineering, Mechanical Engineering, Textile Technology, Electrical Engineering, Mining, Power Resources, Chemical Engineering, Industrial Chemistry, Food Technology, Ceramics and Clay Technology	Industrialization & Enterprise Development
14.	Kenya Institute of Mass Communication	State Corporations Act, Cap 446 under Kenya Institute of Mass Communication Order, 2011	Training in communication and the cinematic-arts	Information, Communication & Technology
15.	Kenya Institute of Public Policy Research & Analysis (KIPPRA)	Kenya Institute for Public Policy Research and Analysis Act, No. 15 of 2006	Public policy research and analysis and related advisory services	Devolution & Planning
16.	Kenya Marine and Fisheries Research Institute	Science and Technology, Cap 250	Research in Marine and Freshwater Fisheries	Agriculture, Livestock & Fisheries
17.	Kenya Medical Research Institute (KEMRI)	Science and Technology Act, Cap 250	Medical research	Health
18.	Kenya Medical Training College (KMTC)	Kenya Medical Training College Act, Cap 261	Training in health services	Health
19.	Kenya Multi-Media University	The Universities Act No. 42 of 2012	To provide and advance university education and training	Education, Science & Technology
20.	Kenya School of Government	Kenya School of Government Act, 2012	provide learning and development programmes to build capacity for the Public Service	Devolution & Planning
21.	Kenya School of Law	Kenya School of Law Act, 2011	public legal education provider responsible for the provision of professional legal training as an agent of the Government	Office of The Attorney General & Department Of Justice
22.	Kenya Utalii College (KUC)	Tourism Act 2011	training qualified professionals for the Hospitality and Tourism industry	East African Affairs, Commerce & Tourism
23.	Kenya Water Institute	Kenya Water Institute Act, 2001	Provide, directly or in collaboration with other institutions of higher learning, services in human resource development, consultancy, research and development in the water sector	Environment, Water & Natural Resources
24.	Kenyatta University	Kenyatta University Act, Cap 210C	to provide and advance university education and training	Education, Science & Technology
25.	Kibabii University College	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
26.	Kirinyaga University College	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
27.	Kisii University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
28.	Laikipia University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
29.	Maasai Mara University	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
30.	Machakos University College	Kenyatta University Act Cap 210C	Provide and advance university education and training	Education, Science & Technology
31.	Maseno University	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
32.	Masinde Muliro University of Science and Technology	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
33.	Meru University of Science and Technology	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
34.	Moi University	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology

#	State Corporation	Enabling Legislation	Mandate	Sector
35.	Murang'a University College	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
36.	National Crime Research Center	The National Crime Research Act Chapter 62	Carry out research into causes of crime and its prevention and to disseminate research findings and recommendations to agencies of Government concerned with administration of criminal justice with a view to assisting them with their policy formulation and planning.	Office Of The Attorney General & Department Of Justice
37.	Pwani University	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
38.	Rongo University College	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
39.	South Eastern Education, Science and Technology Kenya University	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
40.	Taita Taveta University College	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
41.	Technical University of Mombasa	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
42.	The Technical University of Kenya	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
43.	University of Eldoret	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology
44.	University of Kabianga	The Universities Act No. 42 of 2012	Provide and advance university education and training	Education, Science & Technology
45.	University of Nairobi	The Universities Act No. 42 of 2012	to provide and advance university education and training	Education, Science & Technology

Appendix 6 – Reorganisation of Government Owned Entities

Entities Dropped on Account of New Definition

#	State Corporation	Enabling Legislation	Mandate	Sector	Reason
1.	The Kenya Veterinary Board (KVB)	Veterinary Surgeons' and Veterinary Para-professionals (VSVP) Act No. 29 of 2011	To exercise general supervision and control over the training, business, practice and employment of veterinary surgeons and veterinary paraprofessionals in Kenya.	Agriculture, Livestock & Fisheries	Professional body
2.	Animal Technicians Council	Animal Technicians Act No. 11 of 2011	Safeguard interests of all animal technicians Licence and regulate the business and practice of animal technicians	Agriculture, Livestock & Fisheries	Professional body
3.	Institute of Human Resource Management	Human Resource Management Professionals Act, 2012	Establish, monitor and publish the standards of professional competence and practice amongst human resource professionals; Register persons who meet the required professional and ethics standards; Promote research in human resource practice and related matters, Publish books, periodicals, journals and articles on human resource; Regulate the practice, competence and professional conduct of human resource professionals; Promote and protect the welfare and interests of the human resources profession	Devolution and Planning	Professional body
4.	Kenya Universities and Colleges Central Placement Service	The universities act No. 42 of 2012 (Section 55)	Uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved the by Government	Education, Science & Technology	Business Association Not to be a State Corporation as it is an association of universities and colleges. It should not be financed through public funds
5.	KCA University		Provide University and professional education and training	Education, Science & Technology	Professional Body Subsidiary of ICPAK
6.	Kenya Nutritionists and Dieticians Institute	Nutritionists and Dieticians Act No. 18 of 2007	Determine and set a framework for the professional practice of nutritionists and dieticians Set and enforce standards of professional practice and ethics	Health	Professional body
7.	Kenya Medical Laboratory Technicians and Technologists Board	Medical Laboratory Technicians and Technologists Act Chapter 253A	Exercise general supervision and control over the training, business, practice and employment of laboratory technicians and technologists in Kenya and to advise the Government in related matters	Health	Professional Body
8.	Nursing Council of Kenya	Nurses Act Cap 257	Establish and improve standards of all branches of the nursing profession in all their aspects and to safeguard the interests of all nurses; Establish and improve the standards of professional nursing and of health care within the community; Make provision for the training and instruction for persons seeking registration or enrolment under this Act; Prescribe and regulate syllabuses of instruction and courses of training for persons seeking registration or enrolment under this Act;	Health	Professional Body

#	State Corporation	Enabling Legislation	Mandate	Sector	Reason
			Recommend to the Minister institutions to be approved institutions for training of persons seeking registration or enrolment under this Act; Prescribe and conduct examinations for persons seeking registration or enrolment under this Act;		
9.	East African Portland Cement Company Ltd.	Companies Act, Cap 486	Manufacture cement and related products	Industrialization & Enterprise Development	NSSF shares are investments of the Fund and not GOK shares
10.	Media Council of Kenya	Media Act 2007	regulation of media and in the conduct and discipline of journalists	Information and Communication	Business Association
11.	Kenya Red Cross Society	Kenya Red Cross society Cap. 256	Furnish volunteer aid to sick and wounded in time of war and non-belligerents and to prisoners of war and civilian sufferers from effects of war Provide relief to victims of catastrophe Improvement of health and prevention of diseases	Interior and Coordination of National Government	Volunteer organization
12.	St. John Ambulance of Kenya	St. John Ambulance of Kenya Cap. 259	Encourage and promote all works of charity for the relief of persons in sickness, distress, suffering, and danger without any distinction of race, class, colour or creed	Interior and Coordination of National Government	Volunteer organization
13.	National Bank of Kenya	Companies Act Cap. 486	Help Kenyans get access to credit and control their economy	National Treasury	NSSF shares are investments of the Fund not GOK shares
14.	Kenya Institute of Supplies Examination Board	Supplies practitioners management Act No. 17 of 2007	Prescribe and regulate syllabuses of instruction for professional supplies certification and conduct examinations for professional supplies certification	National Treasury	Professional body
15.	Kenya Institute of Supplies Management	Supplies Practitioners Management Act No.17 of 2007	A national body for professionals in the practice of procurement and supplies management in Kenya for promoting learning, development of best practices, and application of the same to the practice of procurement and supply chain management	National Treasury	Professional Body
16.	Institute of Certified Secretaries of Kenya	Certified Public Secretaries of Kenya Cap 534	Promote standards of professional competence and practice amongst members of the Institute; Promote research into the subject of secretarial practices and finance and related matters and the publication of books, periodicals, journals and articles in connection therewith; Promote the international recognition of the Institute; Advise the Examination Board on matters relating to examination standards and policies	National Treasury	Professional Body
17.	Institute of Certified Public Accountants of Kenya	Accountants Cap 15	Promote standards of professional competence and practice amongst members of the Institute; Promote research into the subjects of accountancy and finance and related matters, and the publication of books, periodicals, journals and articles in connection therewith; Promote the international recognition of the Institute; Advise the Examinations Board on	National Treasury	Professional Body

#	State Corporation	Enabling Legislation	Mandate	Sector	Reason
			matters relating to examinations standards and policies; Advise the Minister on matters relating to financial accountability in all sectors of the economy;		
18.	Law Society of Kenya	Law Society of Kenya Cap 18	to maintain and improve the standards of conduct and learning of the legal profession in Kenya; to facilitate the acquisition of legal knowledge by members of the legal profession and others; to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Kenya; to represent, protect and assist members of the legal profession in Kenya in respect of conditions of practice and otherwise; to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law	Office Of The Attorney General & Department Of Justice	Professional Body
19.	Physical Planners Registration Board	Physical Planners Act No. 3 of 1996	Register eligible persons to practice as physical planners Set and conduct examinations for purpose of registration Enquire into professional misconduct of members	Transport & Infrastructure	Professional body
20.	Engineers Registration Board	ACT NO. 43 of 2011 - Engineers Act	Receive, consider, make decisions on applications for registration and register approved applications; Keep and maintain the Register; Publish the names of registered and licensed persons under this Act; Issue licences to qualified persons under the provisions of this Act; Publish and disseminate materials relating to its work and activities; Carry out inquiries on matters pertaining to registration of engineers and practice of engineering	Transport & Infrastructure	Professional Body
21.	Architects and Quantity Surveyors Registration Board	Architects and Quantity Surveyors Cap 525	Registrar shall keep and maintain a register in which the name of every person, being suitably qualified under this Act, shall be entered as soon as is practicable after he is accepted by the Board for registration, showing against his name such particulars as the Board may, from time to time, direct	Transport & Infrastructure	Professional Body

Entities Whose Functions Are Transferred

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
1.	Coffee Development Fund	Coffee Act, 2001	Provide sustainable, affordable credit and advances to coffee farmers	Agriculture, Livestock & Fisheries	Transfer function to AFC
2.	Cotton Development Authority	section 4 of the Cotton(Amendment) Act 2006, Cap 335	to promote, coordinate, monitor, regulate and direct the cotton industry in Kenya	Agriculture, Livestock & Fisheries	Transfer regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
3.	Kenya Coconut Development Authority (KeCDA)	State Corporations Act, Cap 446 through Kenya Coconut Development Authority Order, 2007, Legal Notice No. 165 of 27th August 2007	to develop the coconut industry through regulatory, research and promotion of the coconut sub-sector in Kenya, in line with the national development goals.	Agriculture, Livestock & Fisheries	Transfer regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
4.	Pyrethrum Board of Kenya (now Pyrethrum Regulatory Authority)	Pyrethrum Act, No. 22 of 2013	development, regulation and promotion of the pyrethrum industry	Agriculture, Livestock & Fisheries	Transfer Regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service Transfer commercial function to GIC
5.	Sisal Board of Kenya	Sisal Industry Act, Cap 341	Promote and regulate the sisal industry	Agriculture, Livestock & Fisheries	Transfer regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
6.	Tea Board of Kenya	Tea Act, Cap 343	To license tea manufacturing factories; carry out of research on tea through its technical arm, the Tea Research Foundation of Kenya; the register growers, buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.	Agriculture, Livestock & Fisheries	Transfer Regulatory function to remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
7.	Coffee Board of Kenya	Coffee Act, 2001	Promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest	Agriculture, Livestock & Fisheries	Transfer Regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
8.	Kenya Sugar Board (KSB)	Sugar Act, Cap 342 of 2001	Regulate and promote sugar industry	Agriculture, Livestock & Fisheries	Transfer Regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
9.	Horticultural Crops Development Authority	Agriculture Act Cap 318 through a subsidiary legislation in 1967, Legal Notice No. 190 HCDA Order 2011	To regulate the horticulture industry through licensing and application of rules as prescribed under the Agriculture Act, Cap 318 and also to provide advisory and marketing services to the stakeholders in the industry for planning purposes	Agriculture, Livestock & Fisheries	Transfer Regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
10.	South - South Centre	South - South Centre Order, 2012	Initiate, organize and manage South-South activities and projects in consultation with the Government, civil society organizations or private sector institutions	Devolution & planning	Transfer function to Ministry of Planning & Devolution
11.	Mombasa Pipeline Board	Mombasa Pipeline Board Cap 373 -	To supply water in bulk to such water undertakers as the Minister may, after consultation with the Board, by notice in the Gazette, designate in that behalf	Environment, Water & Natural Resources	Transfer function to Coast Water Services Board
12.	Kenya Yearbook Editorial Board	State Corporations Act, Cap 446 through the Kenya Yearbook Order, 2007 to:	Facilitating Government communication services through the publication of the Kenya Yearbook	Information, Communication & Technology	Transfer function to National Museums of Kenya
13.	The National Social Security Assistance Authority	Social Assistance Act, No.2013	Identify and provide social assistance to persons in need of social assistance;	Labour, Social Security & Services	Transfer function to Ministry of Planning & Devolution
14.	Privatization Commission	Privatization Act, Cap 485C	to formulate, manage, and implement the Privatization Programme.	National Treasury	Transfer function to GIC
15.	Canning Crops Board	Canning Crops Act Cap. 328	Promote canning of scheduled crops including inspection of canning factories and regulation of prices for scheduled crops	Agriculture, Livestock & Fisheries	Transfer Regulatory function to Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
16.	Tourism Research Institute	the Tourism Act, No. 28 of 2011	to undertake and co-ordinate tourism research and analysis in accordance with the provisions of this Act	East African Affairs, Commerce & Tourism	Transfer function to Kenya Utalii College and Universities offering training in tourism
17.	Cereals and Sugar Finance Corporation	Cereals and Sugar Finance Corporation Act Cap. 329	Raise and lend money for purchase of cereals or sugar	Agriculture, Livestock & Fisheries	Transfer function to the Ministry
18.	The National Council for Children's Services	Kenya Gazette Supplement No. 89 16th December, 2005, (Legislative Supplement No. 53), Legal Notice No. 145, The Children Act, 2001 (NO. 8 OF 2001) Sec 30	to provide oversight and co-ordination of children activities in the country.	Interior & Co-ordination of National Government	Transfer function to ministry CEO is designated as an officer of the ministry (Director of Children Services)
19.	Technical and Vocational Education and Training Curriculum Development, Assessment and Certification Council	Technical and Vocational Education and Training Act No. 29 of 2013	Design and development of curricula for the training institutions' examination, assessment and competence certification; make rules with respect to such examinations and competence assessments; issue certificates to candidates who satisfy national TVET examination and competence assessment requirements; and promote recognition of its qualifications in foreign systems;	Education, Science & Technology	Transfer function to Center for Curriculum Development and the Kenya National Examination Council

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
20.	Kenya National Commission for UNESCO	Kenya National Commission For UNESCO Act, No. 5 of 2013	Liaise with UNESCO and implement UNESCO activities and budgeted programs	Education, Science & Technology	Transfer function back to the Ministry
21.	Kenya Tsetse and Trypanosomiasis Eradication Council	Kenya Tsetse and Trypanosomiasis Eradication Council Order, 2012	advise the Government on the policy on tsetse and trypanosomiasis eradication in Kenya and its implementation;	Agriculture, Livestock & Fisheries	Transfer function to the ministry
22.	Lands Limited (subsidiary of Agricultural Development Corporation)	Companies Act Cap. 486	Owens land for Agricultural Development Corporation	Agriculture, Livestock & Fisheries	Transfer function to Agricultural Development Corporation

Entities Performing Devolved Functions

#	State Corporation	Enabling Legislation	Mandate	Sector	Recommendations
1.	Rural Electrification Authority	Energy Act, Cap 12	To accelerate the pace of rural electrification in order to promote sustainable socio-economic development	Energy & Petroleum	Function assigned to County Government
2.	Athi Water Services Board	Water Act, Cap 372	Efficient and economical provision of water services within the Nairobi and Athi Basin/Region	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
3.	Coast Water Services Board	Water Act, Cap 372	Efficient and economical provision of water services within the Coast Region	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
4.	Lake Victoria North Water Service Board	Kenya Gazette Notice No. 1717 of 12th March, 2004 and licensed by the Water Services Regulatory Board (WSREB) on 5th April, 2004	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
5.	Lake Victoria South Water Service Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
6.	Northern Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
7.	Rift Valley Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
8.	Tana Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
9.	Tanathi Water Services Board	Water Act, Cap 372	provision of water and sanitation services	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
10.	Coast Development Authority	Coast Development Authority Act, Cap 449	Plan and co-ordinate the implementation of development projects in whole of the Coast Province and the exclusive economic zone	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
11.	Ewaso Ng'iro North Development Authority	Ewaso Ng'iro North River Basin Development Authority Act, Cap 448	Plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro North River Basin and catchment areas	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
12.	Ewaso Ng'iro South Development Authority	Ewaso Ng'iro South River Basin Development	plan and co-ordinate the implementation of development projects in the	Environment, Water & Natural	Transfer as a joint authority to counties covered under Article 189 (2) subject to

#	State Corporation	Enabling Legislation	Mandate	Sector	Recommendations
		Authority Act, Cap 447	Ewaso Ng'iro South River Basin and catchment areas	Resources	discussions between the national government and county governments
13.	Kerio Valley Development Authority	Kerio Valley Development Authority Act, Cap 441	to plan, initiate, co-ordinate and monitor implementation of programmes and projects that transcend administrative boundaries within KVDA's area of operation. It is also mandated to maintain a liaison between the institutions (KVDA), Government, Private sector and other agencies on matters of development in the area in view of limiting duplication of activities and ensuring best use of Technical, Financial, Human and Natural resources	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
14.	Lake Basin Development Authority	Lake Basin Development Authority Act, Cap 442	Carry out integrated sustainable development planning, Implement development programmes and projects, Coordinate development programmes and activities, Promote management and conservation of natural resources, and to Monitor and evaluate development programmes and projects	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
15.	Tana & Athi Rivers Development Authority	Tana and Athi Rivers Development Authority Act, Cap443	plan and co-ordinate the implementation of development projects in the TRDA areas	Environment, Water & Natural Resources	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
16.	Kenya National Library Service (KNLS)	Kenya National Library Services Board Act, Cap 225	Provide public library services	Sports, Culture & The Arts	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
17.	Kenya Rural Roads Authority	Kenya Roads Act, Act No. 2 of 2007	charged with the responsibility for the management, development, rehabilitation and maintenance of rural roads, including	Transport & Infrastructure	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments
18.	Kenya Urban Roads Authority	Kenya Roads Act, Act No. 2 of 2007	To collect, preserve, study, document and present Kenya's past and present cultural and natural heritage. This is for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now and posterity	Transport & Infrastructure	Transfer as a joint authority to counties covered under Article 189 (2) subject to discussions between the national government and county governments

Candidates for Merging

#	Entity	Enabling Legislation	Mandate	Sector	Remarks
1.	Industrial and Commercial Development Corporation	Industrial and Commercial Development Corporation Act, Cap 445	Facilitating the industrial and economic development of Kenya	Industrialization & Enterprise Development	Merge to form Kenya Development Bank (KDB) Objective: Finance Large scale investments, corporations and development projects
2.	Industrial Development Bank	Companies Act, Cap 486	A Development Finance Institution (DFI)	National Treasury	
3.	Kenya Industrial Estates (KIE)	Companies Act, Cap 486	Address indigenization of businesses, capital formation, regional dispersion of wealth, and exploitation of local resources through provision of industrial sheds, subsidized credit and improvement of entrepreneurial skills to indigenous owned Micro, Small and Medium industries (MSMIs) with special focus on rural industrial development.	Industrialization & Enterprise Development	
4.	Agricultural Finance Corporation	Agricultural Finance Corporation Act, Cap. 323	Development of agriculture and agricultural industries by making loans to farmers, groups and other persons engaging in agriculture or agricultural industries	Agriculture, Livestock & Fisheries	
5.	Kenya Tourist Finance Corporation (Formally KTDC)	The Tourism Act, 2011	to develop tourism facilities and finance private investors	East African Affairs, Commerce & Tourism	
6.	Brand Kenya Board	State Corporations Act, Cap 446 through the Brand Kenya Board Order, 2008	Co-ordinate initiatives for marketing the country in order to maximize their efficiency; and create and maintain the Kenya brand to identify and distinguish Kenyan products, services and concepts.	Information, Communication & Technology	Merge to form Kenya Investment Corporation Objective: Investment promotion and marketing
7.	Kenya Investment Authority	Investment Promotion Act, No. 6 of 2004	Investment Promotion Act, No. 6 of 2004	Industrialization & Enterprise Development	
8.	Kenya Tourist Board	Tourism Act No. 28 of 2011	Promote and market Kenya as a tourist destination locally and internationally	East African Affairs, Commerce & Tourism	
9.	Export Promotion Council (EPC)	Companies Act, Cap 486 (limited by guarantee)	Develop and promote Kenya's exports	East African Affairs, Commerce & Tourism	
10.	Small and Micro Enterprises Authority	Micro and Small Enterprises Act, 2012	Promotion, development, and regulation of micro and small enterprises	Industrialization and Enterprise Development	Merge with Women Fund and Uwezo Fund to form Biashara Kenya Objective: Small and Micro enterprise support, facilitation and capacity building
11.	Youth Enterprises Development Fund	State Corporations Act, Cap 446	Provide loans to existing micro-finance institutions (MFIs), NGOs and SACCOs for on-lending to youth enterprises, attract and facilitate investment in micro, small and medium enterprises oriented commercial infrastructure such as business or industrial parks, markets or business incubators that will be beneficial to youth enterprises and support youth oriented micro, small and medium enterprises to develop linkages with large enterprises, facilitate marketing of products of youth enterprise products and youth employment;	Devolution & Planning	
12.	Capital Markets Authority	Capital Markets Act, Cap 485A	Promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya	National Treasury	
13.	Insurance Regulatory Authority	Insurance act, Cap 487	Regulate the insurance industry	National Treasury	Merge to form Kenya Financial Supervisory Council Objective: Consolidate regulation of financial sector
14.	Retirement Benefits Authority	Retirement Benefits Act, No. 3 of 1997	Regulate and supervise management of retirement benefit schemes	National Treasury	
15.	Sacco Societies Regulatory Authority	Sacco Societies Act 2008	To license and supervise Deposit Taking Sacco Societies in Kenya.	Industrialization & Enterprise Development	
16.	Kenya Forest Service	Forests Act, No. 7 of 2005	Establishment, development and sustainable management, including conservation and rational utilization, of forest resources for the socio-economic development of the country	Environment, Water & Natural Resources	Merge to form Kenya Wildlife and Forest Service Objective: Consolidate conservation and management of wildlife, forestry and water catchments
17.	Kenya Wildlife Service (KWS)	Wildlife (Conservation and Management) Act, Cap 376	conservation, management and utilization of all types of fauna (not being domestic animals) and flora	Environment, Water & Natural Resources	
18.	Kenya Water Towers Agency	State Corporations Act, Cap 446 enabled by Kenya Water Towers Agency Order, 2012	Co-ordinate and oversee the protection, rehabilitation, conservation, and sustainable management of water towers	Environment, Water & Natural Resources	

#	Entity	Enabling Legislation	Mandate	Sector	Remarks
19	Kenya Industrial Property Institute	Industrial Property Act, 2001	Promotion of inventive and innovative activities, to facilitate the acquisition of technology through the grant and regulation of patents, utility models, technovations and industrial designs	Industrialization & Enterprise Development	Merge to form Kenya Intellectual Property Office
20	Anti-Counterfeit Agency	The Anti-Counterfeit Act, 2008	Combat trade in counterfeit goods	Industrialization & Enterprise Development	
21	Kenya Copyright Board	The Copyright Act, 2001	Oversee provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts and for connected purposes	Office Of The Attorney General & Department Of Justice	
22	Kenya Plant Health Inspectorate Services (KEPHIS)	Kenya Plant Health Inspectorate Service Act, 2011	Regulate matters relating to plant protection, seeds and plant varieties; administer and enforce sanitary and phytosanitary measures; support the administration and enforcement of food safety measures; establish service laboratories to monitor quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce	Agriculture, Livestock & Fisheries	Merge to form Kenya Plant and Animal Health Inspectorate Services
23	National Biosafety Authority	The Biosafety Act No. 2 of 2009	to exercise general supervision and control over the transfer, handling and use of genetically modified organisms (GMOs)	Agriculture, Livestock & Fisheries	
24	Coffee Research Foundation	Companies Act, Cap 486 (limited by guarantee)	Promote research into and investigate all issues relating to coffee and such other agricultural and commercial systems as are associated with coffee	Agriculture, Livestock & Fisheries	Merge into Kenya Agricultural and Livestock Research Organization
25	Kenya Agricultural Research Institute (KARI)	Science and Technology Act, Cap 250	Carry out research in the fields agriculture, veterinary Sciences, Forestry, Industrial and allied Technology	Agriculture, Livestock & Fisheries	
26	Kenya Sugar Research Foundation	Companies Act, Cap 486	Undertake research in sugar industry	Agriculture, Livestock & Fisheries	
27	Tea Research Foundation	Companies Act	To generate and disseminate knowledge and technology through innovative research for improved production, processing, value addition and marketing of Kenyan tea while conserving the environment	Agriculture, Livestock & Fisheries	
28	Kenya Dairy Board	Dairy Industry, Cap 336	improvement and control of the dairy industry and its products	Agriculture, Livestock & Fisheries	Merge to form National Livestock Development Corporation Objective; Promotion, development and marketing of livestock and livestock products Regulatory functions to move to a proposed regulator for the sector

Candidates for Dissolution

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
	Coffee Development Fund	Coffee Act, 2001	Provide sustainable, affordable credit and advances to coffee farmers	Agriculture, Livestock & Fisheries	Dissolve Transfer function to AFC
	Cotton Development Authority	section 4 of the Cotton(Amendment) Act 2006, Cap 335	to promote, coordinate, monitor, regulate and direct the cotton industry in Kenya	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Kenya Coconut Development Authority (KeCDA)	State Corporations Act, Cap 446 through Kenya Coconut Development Authority Order, 2007, Legal Notice No. 165 of 27th August 2007	to develop the coconut industry through regulatory, research and promotion of the coconut sub-sector in Kenya, in line with the national development goals.	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Pyrethrum Board of Kenya (now Pyrethrum Regulatory Authority)	Pyrethrum Act, No. 22 of 2013	development, regulation and promotion of the pyrethrum industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service Commercial function goes to GIC
	Sisal Board of Kenya	Sisal Industry Act, Cap 341	Promote and regulate the sisal industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Tea Board of Kenya	Tea Act, Cap 343	To license tea manufacturing factories; carry out of research on tea through its technical arm, the Tea Research Foundation of Kenya; the register growers, buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Coffee Board of Kenya	Coffee Act, 2001	Promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Kenya Sugar Board (KSB)	Sugar Act, Cap 342 of 2001	Regulate and promote sugar industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Horticultural Crops Development Authority	Agriculture Act Cap 318 through a subsidiary legislation in 1967, Legal Notice No. 190 HCDA Order 2011	To regulate the horticulture industry through licensing and application of rules as prescribed under the Agriculture Act, Cap 318 and also to provide advisory and marketing services to the stakeholders in the industry for planning purposes	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	South - South Centre	South - South Centre Order, 2012	Initiate, organize and manage South-South activities and projects in consultation with the Government, civil society organizations or private sector institutions	Devolution & planning	Dissolve Irrelevant
	Rural Electrification Authority	Energy Act, Cap 12	To accelerate the pace of rural electrification in order to promote sustainable socio-economic development	Energy & Petroleum	Dissolve Rural Electrification Levy to become a Fund for electrification to be allocated on need basis
	Mombasa Pipeline Board	Mombasa Pipeline Board Cap 373 -	To supply water in bulk to such water undertakers as the Minister may, after consultation with the Board, by notice in the Gazette, designate in that behalf	Environment, Water & Natural Resources	Dissolve Function taken by coast water services Board
	Water Services Trust Fund	Water Act, Cap 372	According to the Trust Deed, WSTF's mandate is to provide financial	Environment, Water &	Dissolve Function gone to counties

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
			support for improved access to water and sanitation in areas without adequate services including supporting capacity building activities and initiatives that aim at enabling communities to plan, implement, manage, operate and sustain water services-by creating awareness and disseminating information regarding community management of water services, and encouraging their active participation in implementation and management.	Natural Resources	
	Kenya Yearbook Editorial Board	State Corporations Act, Cap 446 through the Kenya Yearbook Order, 2007	Facilitating Government communication services through the publication of the Kenya Yearbook	Information, Communication & Technology	Dissolve Transfer function to National Museums of Kenya
	The National Social Security Assistance Authority	Social Assistance Act, No.2013	Identify and provide social assistance to persons in need of social assistance;	Labour, Social Security & Services	Dissolve Transfer function to government department
	Privatization Commission	Privatization Act, Cap 485C	to formulate, manage, and implement the Privatization Programme.	National Treasury	Dissolve Privatization to be considered under GIC framework
	Kenya Rural Roads Authority	Kenya Roads Act, Act No. 2 of 2007	charged with the responsibility for the management, development, rehabilitation and maintenance of rural roads, including	Transport & Infrastructure	Dissolve The function has moved to counties
	Kenya Urban Roads Authority	Kenya Roads Act, Act No. 2 of 2007	To collect, preserve, study, document and present Kenya's past and present cultural and natural heritage. This is for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now and posterity	Transport & Infrastructure	Dissolve The function has moved to counties
	Canning Crops Board	Canning Crops Act Cap. 328	Promote canning of scheduled crops including inspection of canning factories and regulation of prices for scheduled crops	Agriculture, Livestock & Fisheries	Dissolve Price controls have been removed Promotion of crops to be done by the proposed body for crop promotion, development and marketing
	Tourism Research Institute	the Tourism Act, No. 28 of 2011	to undertake and co-ordinate tourism research and analysis in accordance with the provisions of this Act	East African Affairs, Commerce & Tourism	Dissolve Research can be done by Kenya Utalii College Universities offering tourism
	Cereals and Sugar Finance Corporation	Cereals and Sugar Finance Corporation Act Cap. 329	Raise and lend money for purchase of cereals or sugar	Agriculture, Livestock & Fisheries	Dissolve Obsolete mandate. The law should have been repealed with enactment of Sugar Act and National Cereals and Produce Board Act
	Coffee Development Fund	Coffee Act, 2001	Provide sustainable, affordable credit and advances to coffee farmers	Agriculture, Livestock & Fisheries	Dissolve Transfer function to AFC
	Cotton Development Authority	section 4 of the Cotton(Amendment) Act 2006, Cap 335	to promote, coordinate, monitor, regulate and direct the cotton industry in Kenya	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
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	Pyrethrum Board of Kenya (now Pyrethrum Regulatory Authority)	Pyrethrum Act, No. 22 of 2013	development, regulation and promotion of the pyrethrum industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service Commercial function goes to GIC
	Sisal Board of Kenya	Sisal Industry Act, Cap 341	Promote and regulate the sisal industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
					Promotion Service
	Tea Board of Kenya	Tea Act, Cap 343	To license tea manufacturing factories; carry out of research on tea through its technical arm, the Tea Research Foundation of Kenya; the register growers, buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Coffee Board of Kenya	Coffee Act, 2001	Promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Kenya Sugar Board (KSB)	Sugar Act, Cap 342 of 2001	Regulate and promote sugar industry	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	Horticultural Crops Development Authority	Agriculture Act Cap 318 through a subsidiary legislation in 1967, Legal Notice No. 190 HCDA Order 2011	To regulate the horticulture industry through licensing and application of rules as prescribed under the Agriculture Act, Cap 318 and also to provide advisory and marketing services to the stakeholders in the industry for planning purposes	Agriculture, Livestock & Fisheries	Dissolve Regulatory function remains with Agriculture Fisheries and Food Authority Promotion and development goes to proposed Crops Development and Promotion Service
	South - South Centre	South - South Centre Order, 2012	Initiate, organize and manage South-South activities and projects in consultation with the Government, civil society organizations or private sector institutions	Devolution & planning	Dissolve Irrelevant
	Rural Electrification Authority	Energy Act, Cap 12	To accelerate the pace of rural electrification in order to promote sustainable socio-economic development	Energy & Petroleum	Dissolve Rural Electrification Levy to become a Fund for electrification to be allocated on need basis
	Mombasa Pipeline Board	Mombasa Pipeline Board Cap 373 -	To supply water in bulk to such water undertakers as the Minister may, after consultation with the Board, by notice in the Gazette, designate in that behalf	Environment, Water & Natural Resources	Dissolve Function taken by coast water services Board
	Water Services Trust Fund	Water Act, Cap 372	According to the Trust Deed, WSTF's mandate is to provide financial support for improved access to water and sanitation in areas without adequate services including supporting capacity building activities and initiatives that aim at enabling communities to plan, implement, manage, operate and sustain water services-by creating awareness and disseminating information regarding community management of water services, and encouraging their active participation in implementation and management.	Environment, Water & Natural Resources	Dissolve Function gone to counties
	Kenya Yearbook Editorial Board	State Corporations Act, Cap 446 through the Kenya Yearbook Order, 2007	Facilitating Government communication services through the publication of the Kenya Yearbook	Information, Communication & Technology	Dissolve Transfer function to National Museums of Kenya
	The National Social Security Assistance Authority	Social Assistance Act, No.2013	Identify and provide social assistance to persons in need of social assistance;	Labour, Social Security & Services	Dissolve Transfer function to government department
	Privatization Commission	Privatization Act, Cap 485C	to formulate, manage, and implement the Privatization Programme.	National Treasury	Dissolve Privatization to be considered under GIC framework
	Kenya Rural Roads Authority	Kenya Roads Act, Act No. 2 of 2007	charged with the responsibility for the management, development, rehabilitation and maintenance of rural roads, including	Transport & Infrastructure	Dissolve The function has moved to counties
	Kenya Urban Roads Authority	Kenya Roads Act, Act No. 2 of 2007	To collect, preserve, study, document and present Kenya's past and present cultural and natural heritage. This is for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now	Transport & Infrastructure	Dissolve The function has moved to counties

#	State Corporation	Enabling Legislation	Mandate	Sector	Remarks
			and posterity		
	Canning Crops Board	Canning Crops Act Cap. 328	Promote canning of scheduled crops including inspection of canning factories and regulation of prices for scheduled crops	Agriculture, Livestock & Fisheries	Dissolve Price controls have been removed Promotion of crops to be done by the proposed body for crop promotion, development and marketing
	Tourism Research Institute	the Tourism Act, No. 28 of 2011	to undertake and co-ordinate tourism research and analysis in accordance with the provisions of this Act	East African Affairs, Commerce & Tourism	Dissolve Research can be done by Kenya Utalii College Universities offering tourism
	Cereals and Sugar Finance Corporation	Cereals and Sugar Finance Corporation Act Cap. 329	Raise and lend money for purchase of cereals or sugar	Agriculture, Livestock & Fisheries	Dissolve Obsolete mandate. The law should have been repealed with enactment of Sugar Act and National Cereals and Produce Board Act

Appendix 7 – Government Linked Corporations

#	CORPORATION	GOK SHARES HOLDING
1.	National Bank of Kenya	22.5 %
2.	Kenya Commercial Bank	17.74 %
3.	CFC Stanbic Bank	1.59 %
4.	CFC Insurance Holdings Ltd.	-
5.	Kenya Petroleum Refineries Ltd	50 %
6.	Pan African Paper Mills	33.8 %
7.	Kenya Vehicle Manufacturers	35 %
8.	Ken-Ren chemicals and Fertilizers Ltd	-
9.	Mumias Sugar Company	20 %
10.	Kenya Poultry Ltd.	-
11.	Mercat (k) Ltd.	-
12.	Kenya Airways	23 %
13.	Housing Finance Company of Kenya	3.66 %
14.	Nyari Estate Ltd	2,500 shares
15.	Kenya Farmers association	-
16.	National Agricultural Chemicals and Fertilizers Ltd.	-
17.	Miwani Sugar Co.	49 %
18.	East African Portland Cement Company Ltd.	25.3 %
19.	Safaricom Ltd.	35 %
20.	Telkom Ltd.	30 %
21.	International Finance Corporation	-
22.	African Trade Insurance agency	-
23.	Nairobi Securities Exchange Ltd	1,250,000 shares
24.	East African Breweries Ltd.	-
25.	Africa Reinsurance Corporation	-
26.	Africa Export Import Bank	-
27.	Inter Africa (K) Ltd	-
28.	Uchumi supermarkets	13
29.	Shelter Afrique	8,373 shares

NB: The National Treasury to confirm shareholding where no numbers are provided

Appendix 8 - Developing the Manufacturing Sector In Kenya

Policy Foundations for Special Economic Zones in Kenya

Kenya's economic blueprint Vision 2030 identifies six priority sectors under the Economic Pillar that will drive economic growth namely; Tourism, Agriculture, Wholesale and Retail Trade, Business Process Outsourcing (BPO), Financial Services, *and Manufacturing*. The sector vision is the creation of a *"robust, diversified, and competitive manufacturing sector"*. Under the Second Medium term Plan, a seventh sector, Oil, Gas and Minerals has been added. Vision 2030 sets ambitious goals for the manufacturing sector – that of growing annually by 10%, and increasing the manufacturing sectors' share or contribution to GDP by at least 10 percentage points annually. These are to be achieved through implementation of three strategic policy thrusts: *(i) Local Production; (ii) Regional Market Expansion; and (iii) Global Market Niche*.

Cabinet made the Policy Decision to establish Special Economic Zones (SEZs), and convert Export Processing Zones (EPZs) to SEZs, as a key element of the manufacturing sector's vision of developing a "robust, diversified, and competitive manufacturing sector." The Cabinet decision underpins the policies and objectives of establishing Special Economic Zones (SEZs) in Kenya.

The Jubilee Manifesto builds upon Vision 2030 policies and goals for the manufacturing sector and the Cabinet Decision by adopting the goal of *"Sparkling an Industrial Revolution"* to "create a strong manufacturing base and propel (Kenya) towards becoming Africa's industrial hub". The Jubilee Manifesto expects Government to play the role of "an enabler, regulator, guarantor and funder" of the nation's manufacturing and industrial vision.

The Jubilee Manifesto further seeks more ambitious goals of making Kenya the *"continent's manufacturing and technology hub, the preferred gateway to Africa for foreign (direct) investors, and home to a thriving army of local entrepreneurs"*. The overarching policy objective for the Manufacturing Sectors in the Jubilee Manifesto is the creation of 1 million new jobs in the manufacturing sector. This flagship goal is to be achieved through "tax incentives and grants for overseas companies to establish industrial plants in the country" for supplying domestic and regional markets.

Other policies envisaged to support manufacturing under the Jubilee Manifesto include

1. improving energy infrastructure and promoting alternative energy sources;
2. ensuring adequate and cost-effective energy supply for industrial take-off;
3. improving infrastructure services such as roads, rail and water supply;
4. enacting Public Private Partnership (PPP) legislation and regulations to encourage private investment;
5. Establishing the Kenya Development Bank to finance capital projects, including infrastructure development; (an important link between the goal of developing a strong manufacturing base and the creation of Kenya Development Bank by consolidating IPAs other than EPZA)
6. Reducing business taxation and unnecessary regulation to make Kenya's business more competitive; and
7. Developing new enterprise zones in each County (*developing SEZs will help meet this goal*).

Objectives, Purpose and Justification for Special Economic Zones in Kenya

Special Economic Zones (SEZs) are geographic regions with more liberal economic and trade laws than the country's typical business, economic and trade laws. Kenya's objectives for establishing SEZs are broadly similar to those of leading emerging nations (particularly China and Malaysia), and include: (1) *Creating 1 million new manufacturing sector jobs (employment)*; (2) *attracting Foreign Direct Investment (FDI) and Technology Transfers*; (3) *Increasing and diversifying manufacturing exports, trade and foreign exchange* earnings away from traditional/historical products and markets; (4) Improving infrastructure for industry and enterprises; (5) *developing technological and innovation platforms*; and (6) *achieving sustained economic growth*

Special Economic Zones as a policy measure offer Kenya *the potential to facilitate rapid industrialization* initially in controlled industrial enclaves that can later be scaled up and extended to the rest of the country. The primary justification at a policy level for establishing Special Economic Zones in Kenya is to create 1 million new jobs, facilitate rapid development of a diversified and competitive manufacturing sector and increase output, productivity and economic growth. SEZs typically offer manufacturing and industrial firms more targeted fiscal, financial, and regulatory and trade incentives; coupled with world-class infrastructure, dedicated investment promotion agency with

One-Stop Shops for expedited approvals; and aftercare services to investors. Developing SEZs can help Kenya to address the constraints facing the manufacturing sector in particular and other challenges facing industry and enterprises in general. These challenges are detailed below:

High input costs leading to high costs of production caused by: Poor infrastructure in Ports, Airports, Water, Roads, Rail, Housing; high power (energy) costs; high and rising labour costs' and Expensive or low-quality raw materials.

Low capital productivity caused by: Low and declining capital investment levels; Inefficient flows of goods and service; and Inefficient and costly infrastructure for energy and transport/logistics (ports, road, rail)

Unfavourable or adverse business and investment environment due to: Limited access to capital; heavy burden of regulation affecting ease of doing business; lack of rigorous legal enforcement of standards and tax laws; insecurity; and weak capacity for negotiating favourable economic trade agreements (AGOA, EPAs).

Best Practices in Implementation of Special Economic Zones

Investment and Incentives Packages

- Attractive Incentive packages for SEZ enterprises and zones
- Time limited incentives with sunset provision after 5 to 10 years
- Minimum Investment thresholds of UDS 5mn
- Targeted Priority industrial sectors and clusters determined by policy
- Industry- Specific and Sector- Specific incentives
- Targeted Regional HQ Incentives (RHQ)

Fiscal Incentives

- Time limited tax holidays on Dividends, Interest and Corporate Tax
- Extra incentives for investments in priority industrial sectors and clusters
- Special packages to attract Long Term Investments from MNCs/MNEs

Regulatory Incentives

- Business and work permits Approvals (speed, process certainty)
- One single Investment Promotion Agency (IPA)
- One Stop Shop (OSS) on all matters of investment, trade and industry

Non-regulatory Incentives

- High economic growth (single most important determinant in attracting FDI)
- Well-developed Regional Financial Centre (RFCs) to finance SEZs
- Trade and financial sector liberalization

Physical Infrastructure

- World-class infrastructure in flagship SEZs (Power, Rail, Ports, Water, Telcos)
- Mix of private investment in publicly owned and developed Zones
- Competitive Shipping, transportation and trade logistics that integrate SEZ enterprises into global and regional supply and value chains.

Market Access

- 100% unfettered Access to domestic and regional markets (subject to “no significant harm to domestic industry”)
- Preferential trade access to overseas markets (EU-ACP, AGOA 2005–2016, GSP in USA)

Cluster Development

- Well-developed cluster supporting institutions and infrastructure including R&D facilities, Training Institutions, Certifications/Standards Bodies)
- Concurrent development of export-capable SMEs that complement SEZ enterprises through linkages like sub-contracting, in-sourcing, outsourcing, BPO, and contact manufacture.

Appendix 9 - Creating Biashara Kenya as a Single Agency for Supporting SMES

Overarching Goals and Objectives of Biashara Kenya

Biashara Kenya should be guided by two broad Policy goals: (1) enhancing economic participation of SMEs, Youth, Women and Disadvantaged Groups, including persons with disabilities (PWDs) and marginalized communities; and (2) providing support, facilities, training, and skills development to enhance productivity and sustainably improve standards of living to drive Kenya towards a middle income country with a high standard of living.

Biashara Kenya's mandate will be to empower Youth, Women and the small enterprises that the majority of Kenyans derive their livelihoods from. It will be the Government's principal agency for developing and supporting SMEs, including integrating small businesses into the supply chains of larger domestic, regional and global markets and corporations. Biashara Kenya's activities and impact are envisaged to go beyond SME financing (without being an SME Bank) to encompass an agency that encourages investments in Youth, Women and small enterprises. Its roles will evolve over time and could grow to include provision of equity, venture capital and private equity (on its own or in association with venture capital and private equity funds). The agency will also be a critical link between SMEs and the nation's ICT policies and programs.

Policy Foundations of Biashara Kenya

The policy foundations for the creation of Biashara Kenya as a dedicated agency for development of SMEs, including Youth, Women and minority-owned businesses is based on Vision 2030. The nation's economic blue print recognizes the critical role that SMEs play in the nation's economic development in the priority sectors of Manufacturing, Wholesale and Retail Trade and ICT/BPO.

Biashara Kenya's role in developing SMEs in the Manufacturing Sector

The Manufacturing Sector's vision of developing a "robust, diversified and competitive manufacturing sector" identifies the three strategic thrusts of (i) Local production; (ii) Regional market expansion; and (iii) Global market niche. The strategic thrust of strengthening local production capacity to increase domestically-manufactured goods seeks to improve sector productivity, raise the share of Kenyan products in regional markets from 7% to 15%; and develop niche products in which Kenya can achieve a globally competitive position. The measures identified to meet these goals include:

- Strengthen SMEs to become the key industries of tomorrow by improving their productivity and innovation;
- Increase investment in R&D so as to boost Science, Technology and Innovation (STI);
- Develop at least Five (5) Small and Medium Enterprise (SME) Industrial Parks as flagship projects in key urban centres and providing relevant infrastructure and services (in conjunction with County Governments)
- Develop ICT/BPO sector as a major source of employment for youth and young professionals

Biashara Kenya's role in developing SMEs in the Wholesale and Retail Trade

The agency can play a major role in developing the Wholesale and Retail Trade sector towards the goal of a formal sector that is "efficient, multi-tiered, diversified in product range, and innovative". Measures that it can support include provision of secure business locations; credit and capacity building; access to information, labour, capital and markets; and integration into regional and global markets.

Biashara Kenya can be set up to offer specific interventions including credit; capacity building and training in relevant skills; improving efficiency by reducing the number of players between producers and consumers; creating formal market outlets for SMEs to graduate them from the informal sector; encouraging investment in retail trade; developing outreach programmes to expand retail trade; and Developing training programmes to improve retail skills.

Other Initiatives that the agency can consider based on market conditions could include:

- extending access to information on markets through the Internet and mobile phones
- expediting the on-going efforts of building digital villages
- investing in telecommunications infrastructure to support SMEs or creating awareness;
- Strengthening the capacity of informal sector operators to grow them into sustainable SMEs through security of tenure (Jua kali Sheds), training; credit and linkages with local and international markets;
- providing quality control services like certification of Jua kali products;
- developing linkages to large enterprises for example through establishment of SMEs in the FTZs to be developed under the proposed Special Economic Zones and subcontracting to large SEZ Enterprises
- developing programs to expand SME and retail trade in planned resort cities
- training programs to improve retail trader's skills in management, accounting and marketing

The challenge of Empowering Youth, Women and SMEs to realize their Potential

High unemployment remains one of the greatest challenges facing the nation, with Youth accounting for the bulk of the unemployed. Youth between ages of 18- 35 account for 30.3% of the total population but make up 70% of the unemployed.

92% of unemployed youth have some formal education but do not possess relevant skills demanded by the market. The country needs to seize the opportunity of equipping and empowering Youth to attain and realize their full potential.

The Jubilee Manifesto identifies creation of Jobs and fostering enterprise as possible solutions to the problem of high youth unemployment; and suggests the following measures:

- Re-engineer education through establishing Institutes of Technology in every constituency to provide basic vocational skills free of charge so as to empower youth with effective and relevant skills for serving a modern economy. Kenya needs to emphasize technical education and training (STEM) which are critically important to economic development and wealth creation.
- Undertake national audit(s) of skills and competencies and align training opportunities and resources to National and County human resource requirements (Jubilee Coalition to conduct first national skills audit within 1 Year of taking office)
- Allocate 2.5% of national revenue annually to the Youth Enterprise Capital/Fund (proposed to be placed under Biashara Kenya) to increase youth access to finance individually and in Groups without traditional collateral requirements.
- Enhance youth-specific affirmative action on Government procurement to mainstream participation of youth-run enterprises in economic development, including through special reservations of 25% (raised to 30%).
- Develop and promote internship policy that provides incentives to industry to offer practical, on- the- job- training for college students
- Establish innovation centres to support emerging generation of creative industries.
- Encourage growth and development of Micro-Finance Institutions (MFIs) whose customers tend to be drawn mostly from the low income segment (including along the lines of the renowned and successful Grameen Table Banking Model.
- Outlaw workplace discrimination (by gender) to promote equal Job opportunities for women
- Implement a “Buy Kenya” policy for the public sector to create and expand the markets for locally produced goods and services internally but also regionally and internationally
- Reserve 30% of Government procurement to SMEs, Youth and Women owned enterprises supported and financed by the proposed Biashara Kenya Agency
- Develop special SME Industrial Parks and clusters in the Counties that target young people and women who start small businesses and provide access to electricity, water, capital equipment and clean sanitary environments and improved access roads to boost growth at the county level and relieve the pressure on services in urban areas Develop and Equip these SME Industrial Parks with major capital items required in operating small businesses such as motor mechanics, plumbing, artisans, leather and wood works, carpentry and similar trades
- Promoting brand-names of locally manufactured products to boost incomes for promising artisans, youths and SMEs (for example creating markets for Jua Kali products, male and female body care products, coffee houses and milk-bars).
- Establish local Economic Development Agencies at County Levels to provide crucial facilities and services to SMEs.
- Introduce tax breaks for companies that establish apprenticeship programs for young people to equip young people with necessary skills and technology,
- Increase human resource capacity in ICT through improved ICT education in schools and teacher training
- Progressively roll out free WI-FI in major towns over the next 5 years.
- Create incubation hubs for ICT start-ups in each County through the proposed Biashara Kenya and to extend these constituencies to empower youth with the necessary training and work experience to develop market ready ICT services and products.
- Instigate a ‘buy local’ policy for Government and parastatals ICT expenditure that supports Kenyan ICT companies and SMEs as suppliers; and encourage youth to develop market- ready software and products for the Government and public agencies as primary consumers. Government can also increase employment of youth and women in ICT related jobs in Government as well as granting youth and women the necessary work experience (apprenticeships and on the job training).

Appendix 10 - Constitutional Provisions to Support Development of the Code of Governance of Government Owned Entities in Kenya

Article 10 (2)

The national values and principles of governance include—

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development.

Article 27

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
- (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
- (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Article 47

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.

Article 56

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided special opportunities in educational and economic fields;
- (c) are provided special opportunities for access to employment;
- (d) develop their cultural values, languages and practices; and
- (e) have reasonable access to water, health services and infrastructure.

Article 57

The State shall take measures to ensure the rights of older persons—

- (a) to fully participate in the affairs of society;
- (b) to pursue their personal development;
- (c) to live in dignity and respect and be free from abuse; and
- (d) to receive reasonable care and assistance from their family and the State.

Article 73

(1) Authority assigned to a State officer—

- (a) is a public trust to be exercised in a manner that— (i) is consistent with the purposes and objects of this Constitution;
- (ii) demonstrates respect for the people;
- (iii) brings honour to the nation and dignity to the office; and
- (iv) promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- (c) selfless service based solely on the public interest, demonstrated by—
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.

Article 75

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and
- (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause (2) is disqualified from holding any other State office.

Article 77

(1) A full-time State officer shall not participate in any other gainful employment.

(2) Any appointed State officer shall not hold office in a political

(3) A retired State officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions as chairperson, director or employee of—

(a) a company owned or controlled by the State; or (b) a State organ.

(4) A retired State officer shall not receive remuneration from public funds other than as contemplated in clause (3).

Article 232 Values and principles of public service

(1) The values and principles of public service include—

- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsive, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate
- (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities; and
- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) the members of all ethnic groups; and
 - (iii) persons with disabilities.

Appendix 11 - Summary of Good Practices in Resource Based Sovereign Wealth Funds

Country	Norway	Abu Dhabi	Qatar	Botswana	Nigeria
Fund	Government Pension Fund (GPF)	Abu Dhabi Investment Authority (ADIA)	Qatar Investment Authority (QIA)	Pula	Nigeria Sovereign Investment Authority
Origin	Oil	Oil	Oil	Diamonds / Minerals	Oil
Inception	1990	1976	2005	1994	2011
Initial capital	-	-	-	-	US \$1 billion
mission	Facilitate government savings to finance rising public pension expenditures, and support long-term considerations in the spending of government petroleum revenues.	Invest funds on behalf of the Government to make available the necessary financial resources to secure and maintain the future welfare of the Emirate	Develop, invest, and manage the state reserve funds and other property assigned to it by the Government	Invests in public equity and fixed income instruments in industrialized and developed economies	Manage and invest on behalf of Government of Nigeria
Governance /regulation	Established by the Pension Fund Act	wholly owned and subject to supervision by the Abu Dhabi Government and has an independent legal identity	wholly owned and subject to supervision by the Government of the State of Qatar	Established under Bank of Botswana Act (Managed by bank of Botswana)	Set up by the Nigeria Sovereign Investment Authority Act

Appendix 12 - Summary of Good Practices in Non-Commodity Based Sovereign Wealth Funds

Country	China	China	China	Singapore	Singapore	Hong Kong	Korea	Malaysia	Brazil	Indonesia
Fund	China Investment Corporation (CIC)	State Administration of Foreign Exchange (SAFE) Investment Company	National Council for Social Security Fund	Government of Singapore Investment Corporation Private Limited (GIC)	Temasek	Hong Kong Monetary Authority (HKMA)	Korea Investment Corporation (KIC)	Khazanah Nasional Berhad	Sovereign Fund of Brazil or Fundo Soberano do Brasil (FSB)	Government Investment Unit of Indonesia- Indonesia Investment Agency or Pusat Investasi Pemerintah (PIP)
Origin	Non-commodity	Non-commodity	Non-Commodity (Supplementary fund of People's Republic of China for Social Security)	Non-Commodity	Non-Commodity (various stakes- previously held by Ministry of Finance)	Non-Commodity	Non-Commodity	Non-Commodity	Non-Commodity	Non-Commodity
Inception	2007	1997	2000	1981	1974	1993	2005	1993	2008	2006
Initial capital	US\$200 billion	US\$20 billion	-	-	US\$100 mn	-	US\$ 20 billion	-	US \$5.9 billion	US \$340 mn
Mission /objectives	Make long-term investments that maximize risk adjusted financial returns for the benefit of shareholder.- does not take a controlling role; investments not limited to any sector	manage the state foreign exchange reserves	Manage and operate the NSSF's assets	Preserve & enhance the international purchasing power of the reserves, with the aim to achieve good long-term returns above global inflation over the investment time horizon of 20 years	Investment company	Promote the efficiency, integrity and development of the financial system- maintaining monetary and banking stability (Hong Kong's currency board and central banking authority)	manage foreign reserves and other public funds, specializing in overseas investments	hold and manage the commercial assets of the government and to undertake strategic investments	support national companies in export activities and more broadly act as a mechanism for anti-cyclical development promote investment in projects of strategic interest to Brazil abroad internally	Increase macroeconomic stability, economic growth, and government investment
Governance/ regulation	wholly state-owned company under the Company Law – Board reports to the State Council of the People's Republic of China	Operates under SAFE which is an administrative agency of Government	Government agency on the ministerial level directly under the State Council of the People's Republic of China	Wholly owned by Government of Singapore; incorporated under the Singapore Companies Act	Owned by the state and established by an Act of Parliament (close links to government have on several occasions caused protests in foreign countries)	Government Authority -reports directly to Financial Secretary; Fund established & managed originally by "Currency Ordinance" in 1935. Now named "Exchange Fund Ordinance".	Government-owned - runs commercially and independently- established under the KIC Act	Government owned and Incorporated under the Companies Act 1965 as a public limited company.	Advisory Board composed of Government Planning & Finance Ministers; and the Central Bank President. Brazilian National Treasury responsible for operating the fund	Managed by the Ministry of Finance

Appendix 13 - Summary of Sovereign Fund Assets at December 2012

Country	Sovereign Fund Name	Assets SBn	Inception	Origin
UAE - Abu Dhabi	Abu Dhabi Investment Authority	\$627.00	1976	Oil
Norway	Government Pension Fund - Global	\$611.00	1990	Oil
China	SAFE Investment Company	\$567.90	1997	Non-commodity
Saudi Arabia	SAMA Foreign Holdings	\$532.80		Oil
China	China Investment Corporation	\$439.60	2007	Non-commodity
Kuwait	Kuwait Investment Authority	\$296.00	1953	Oil
China - Hong Kong	Hong Kong Monetary Authority Investment Portfolio	\$293.30	1993	Non-commodity
Singapore	Government of Singapore Investment Corporation	\$247.50	1981	Non-commodity
Singapore	Temasek Holdings	\$157.20	1974	Non-commodity
Russia	National Wealth Fund*	\$149.70	2008	Oil
China	National Social Security Fund	\$134.50	2000	Non-commodity
Qatar	Qatar Investment Authority	\$100.00	2005	Oil
Australia	Australian Future Fund	\$80.00	2006	Non-commodity
UAE - Dubai	Investment Corporation of Dubai	\$70.00	2006	Oil
Libya	Libyan Investment Authority	\$65.00	2006	Oil
Kazakhstan	Kazakhstan National Fund	\$58.20	2000	Oil
UAE - Abu Dhabi	International Petroleum Investment Company	\$58.00	1984	Oil
Algeria	Revenue Regulation Fund	\$56.70	2000	Oil
UAE - Abu Dhabi	Mubadala Development Company	\$48.20	2002	Oil
South Korea	Korea Investment Corporation	\$43.00	2005	Non-commodity
US - Alaska	Alaska Permanent fund	\$40.30	1976	Oil
Malaysia	Khazanah Nasional	\$36.80	1993	Non-commodity
Azerbaijan	State Oil Fund	\$30.20	1999	Oil
Ireland	National Pensions Reserve Fund	\$30.00	2001	Non-commodity
Brunei	Brunei Investment Agency	\$30.00	1983	Oil
France	Strategic Investment Fund	\$28.00	2008	Non-commodity
US - Texas	Texas Permanent School Fund	\$24.40	1854	Oil & Other
Iran	Oil Stabilization Fund	\$23.00	1999	Oil
New Zealand	New Zealand Superannuation Fund	\$15.90	2003	Non-commodity
Canada	Alberta's Heritage Fund	\$15.10	1976	Oil
Chile	Social & Economic Stabilization Fund	\$15.00	2007	Copper
US - New Mexico	New Mexico State Investment Council	\$14.30	1958	Non-commodity
Brazil	Sovereign Fund of Brazil	\$11.30	2008	Non-commodity
East Timor	Timor-Leste Petroleum Fund	\$9.90	2005	Oil & Gas
Bahrain	Mumtalakat Holdings	\$9.10	2006	Non-commodity
Oman	State General Reserve Fund	\$8.20	1980	Oil & Gas

Appendix 14 - A Brief on the Santiago Principles

Principle	Statement
GAPP 1. Principle	The legal framework for the SWF should be sound and support its effective operation and the achievement of its stated objective(s).
GAPP 1.1 Sub principle	The legal framework for the SWF should ensure the legal soundness of the SWF and its transactions.
GAPP 1.2 Sub principle	The key features of the SWF's legal basis and structure, as well as the legal relationship between the SWF and the other state bodies, should be publicly disclosed.
GAPP 2. Principle	The policy purpose of the SWF should be clearly defined and publicly disclosed.
GAPP 3. Principle	Where the SWF's activities have significant direct domestic macroeconomic implications, those activities should be closely coordinated with the domestic fiscal and monetary authorities, so as to ensure consistency with the overall macroeconomic policies.
GAPP 4. Principle	There should be clear and publicly disclosed policies, rules, procedures, or arrangements in relation to the SWF's general approach to funding, withdrawal, and spending operations.
GAPP 4.1 Sub principle	The source of SWF funding should be publicly disclosed.
GAPP 4.2 Sub principle	The general approach to withdrawals from the SWF and spending on behalf of the government should be publicly disclosed.
GAPP 5. Principle	The relevant statistical data pertaining to the SWF should be reported on a timely basis to the owner, or as otherwise required, for inclusion where appropriate in macroeconomic data sets.
GAPP 6. Principle	The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the SWF to pursue its objectives.
GAPP 7. Principle	The owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the SWF's operations.
GAPP 8. Principle	The governing body(ies) should act in the best interests of the SWF, and have a clear mandate and adequate authority and competency to carry out its functions.
GAPP 9. Principle	The operational management of the SWF should implement the SWF's strategies in an independent manner and in accordance with clearly defined responsibilities.
GAPP 10. Principle	The accountability framework for the SWF's operations should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreement.
GAPP 11. Principle	An annual report and accompanying financial statements on the SWF's operations and performance should be prepared in a timely fashion and in accordance with recognized international or national accounting standards in a consistent manner.
GAPP 12. Principle	The SWF's operations and financial statements should be audited annually in accordance with recognized international or national auditing standards in a consistent manner.
GAPP 13. Principle	Professional and ethical standards should be clearly defined and made known to the members of the SWF's governing body(ies), management, and staff.
GAPP 14. Principle	Dealing with third parties for the purpose of the SWF's operational management should be based on economic and financial grounds, and follow clear rules and procedures.
GAPP 15. Principle	SWF operations and activities in host countries should be conducted in compliance with all applicable regulatory and disclosure requirements of the countries in which they operate.
GAPP 16. Principle	The governance framework and objectives, as well as the manner in which the SWF's management is operationally independent from the owner, should be publicly disclosed.
GAPP 17. Principle	Relevant financial information regarding the SWF should be publicly disclosed to demonstrate its economic and financial orientation, so as to contribute to stability in international financial markets and enhance trust in recipient countries.
GAPP 18. Principle	The SWF's investment policy should be clear and consistent with its defined objectives, risk tolerance, and investment strategy, as set by the owner or the governing body(ies), and be based on

Principle	Statement
	sound portfolio management principles.
GAPP 18.1 Sub principle.	The investment policy should guide the SWF's financial risk exposures and the possible use of leverage
GAPP 18.2 Sub principle	The investment policy should address the extent to which internal and/or external investment managers are used, the range of their activities and authority, and the process by which they are selected and their performance monitored.
GAPP 18.3 Sub principle	A description of the investment policy of the SWF should be publicly disclosed.
GAPP 19. Principle	The SWF's investment decisions should aim to maximize risk-adjusted financial returns in a manner consistent with its investment policy, and based on economic and financial grounds.
GAPP 19.1 Sub principle	If investment decisions are subject to other than economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed.
GAPP 19.2 Sub principle	The management of an SWF's assets should be consistent with what is generally accepted as sound asset management principles.
GAPP 20. Principle	The SWF should not seek or take advantage of privileged information or inappropriate influence by the broader government in competing with private entities.
GAPP 21. Principle	SWFs view shareholder ownership rights as a fundamental element of their equity investments' value. If an SWF chooses to exercise its ownership rights, it should do so in a manner that is consistent with its investment policy and protects the financial value of its investments. The SWF should publicly disclose its general approach to voting securities of listed entities, including the key factors guiding its exercise of ownership rights.
GAPP 22. Principle	The SWF should have a framework that identifies, assesses, and manages the risks of its operations.
GAPP 22.1 Sub principle	The risk management framework should include reliable information and timely reporting systems, which should enable the adequate monitoring and management of relevant risks within acceptable parameters and levels, control and incentive mechanisms, codes of conduct, business continuity planning, and an independent audit function.
GAPP 22.2 Sub principle	The general approach to the SWF's risk management framework should be publicly disclosed.
GAPP 23. Principle	The assets and investment performance (absolute and relative to benchmarks, if any) of the SWF should be measured and reported to the owner according to clearly defined principles or standards.
GAPP 24. Principle	A process of regular review of the implementation of the GAPP should be engaged in by or on behalf of the SWF.

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Endnotes

¹ ***Applying The King III Code For Governance:*** The King III Code of Governance for South Africa states that a compliance-based approach adds little value to the governance of a company as it merely assesses compliance with existing procedures and processes without an evaluation of whether or not the procedure or process is an adequate control.

The King III Code provides a set of principles and practices for the governance of companies in South Africa. All companies are expected to “Apply” these principles and practices or “Explain” the alternative and state why it is preferred to that recommended in the King III Code.

² <http://www.treasury.gov.za/publications/guidelines/SP%20APP%20Framework.pdf> on Wednesday, September 11, 2013 at 6:49 AM

³ Economic survey 2013

⁴ Koppell (2007) has argued that China’s reform of state-owned enterprises (SOEs) is to liberate them from bureaucratic control that hinders their management, and learning from America’s own experience requires three things. First, welfare functions must be stripped from SOEs and replaced by policy objectives compatible with commercial purposes. Second, reducing financial dependence on SOEs will remove a barrier to rational control. Third, and most importantly, a robust regulatory framework for control must be developed as a substitute for the weakened administrative linkages. The emerging control infrastructure rooted in state asset commissions is likely to prove ineffective for its blurring of ownership, administration, and regulation. <http://law.asu.edu/LinkClick.aspx?fileticket=7YzD5k5kYNU%3D&tabid=2927> on Wednesday, September 11, 2013 at 7:52 AM

⁵ Omano, Edigheji (2005), A Democratic Developmental State in Africa? A concept paper. Centre for Policy Studies. Research Report 105 of May 2005.

⁶ http://www.tetrachintdev.com/index.php?option=com_k2&view=item&id=163%3Akenya-reforming-the-public-procurement-system&Itemid=227&lang=us on Monday, 14 October 2013 at 1:09 PM

⁷ http://www.ppoa.go.ke/downloads/Bidders%20workshop/development_of_long_term_policy.pdf on Monday, 14 October 2013 at 1:09 PM

⁸ Chartered Secretaries of Australia (2013) Good Governance Guide: Good Governance Guide — Issues to consider for a chief executive officer who is also appointed as the company secretary. http://www.csaust.com/media/497420/2012_ggg_issue_to_consider_for_a_ceo_who_is_also_appointed_as_the_companysecretary.pdf on Thursday, 08 August 2013

⁹ **THE CAPITAL MARKETS ACT, (Cap. 485A): GUIDELINES ON CORPORATE GOVERNANCE PRACTICES BY PUBLIC LISTED COMPANIES IN KENYA**

Board balance

The board should compose of a balance of executive directors and non-executive directors (including at least one third independent and non- executive directors) of diverse skills or expertise in order to ensure that no individual or small group of individuals can dominate the boards’ decision- making processes.

“Independent director” means a director who:

- (i) has not been employed by the Company in an executive capacity within the last five years;
- (ii) is not associated to an adviser or consultant to the Company or a member of the Company’s senior management or a significant customer or supplier of the Company or with a not-for- profit entity that receives significant contributions from the Company; or within the last five years, has not had any business relationship with the Company (other than service as a director) for which the Company has been required to make disclosure;
- (iii) has no personal service contract(s) with the Company, or a member of the Company’s senior management;
- (iv) is not employed by a public listed company at which an executive officer of the Company serves as a director;
- (v) is not a member of the immediate family of any person described above; or

(vi) has not had any of the relationships described above with any affiliate of the Company.

“Non-Executive Director” means a director who is not involved in the administrative or managerial operations of the Company.

¹⁰ Guido Tabellini, 2004. "The Role of the State in Economic Development," CESifo Working Paper Series 1256, CESifo Group Munich.

¹¹ Hwedi (nd) The State and Development in Southern Africa: A Comparative Analysis of Botswana and Mauritius with Angola, Malawi and Zambia. <http://www.africa.ufl.edu/asq/v5/v5i1a2.htm#FN3> on Monday, 12 August 2013 at 11:57 am

¹² <http://library.fes.de/pdf-files/iez/global/02055.pdf> on Monday, 12 August 2013 at 12:01 PM