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NO. 20 OF 2013

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KENYA MEDICAL SUPPLIES AUTHORITY ACT

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PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD

NO. 20 OF 2013

KENYA MEDICAL SUPPLIES AUTHORITY ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: 25th January, 2013.]

An Act of Parliament to make provisions for the establishment of the Kenya Medical Supplies Authority and for connected purposes

[Act No. 20 of 2013, Act No. 25 of 2015.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Medical Supplies Authority Act, 2013.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Authority**” means Kenya Medical Supplies Authority as established under section 3;

“**Board**” means the Board of Directors established under section 5;

“**Cabinet Secretary**” means the cabinet secretary for the time being responsible for matters relating to medical supplies;

“**director**” means a director of the Board appointed under section 5;

“**drugs**” has meaning assigned to it in the Pharmacy and Poisons Act (Cap. 244);

“**medical supplies**” refers to and includes products or materials used in the delivery of health care services to namely pharmaceuticals, non pharmaceuticals, nutraceuticals, vaccines and therapeutic antisera, medical equipment and devices, medical appliances and materials, health technologies, laboratory supplies and reagents, dental materials, hospital consumables, and any other material or equipment as may be necessary for the delivery of health care services in Kenya;

“**strategic reserve stock**” means at least six months stocks of a list of prescribed medical supplies to be identified and updated as and when required by the Cabinet Secretary in consultation with the Authority.

PART II – THE KENYA MEDICAL SUPPLIES AUTHORITY

3. Establishment of the Authority

(1) There is established an Authority to be known as the Kenya Medical Supplies Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) purchasing, charging and disposing of movable and immovable property;

- (c) borrowing money;
- (d) entering into contracts;
- (e) doing or performing all such other acts necessary for the proper performance of its functions under this Act.

(3) The Authority shall be the successor to the Kenya Medical Supplies Agency (L.N. 17/2000) established under the State Corporations Act (Cap. 446).

4. Functions of the Authority

(1) The functions of the Authority shall be to—

- (a) procure, warehouse and distribute drugs and medical supplies for prescribed public health programmes, the national strategic stock reserve, prescribed essential health packages and national referral hospitals;
- (b) establish a network of storage, packaging and distribution facilities for the provision of drugs and medical supplies to health institutions;
- (c) enter into partnership with or establish frameworks with county Governments for purposes of providing services in procurement, warehousing, distribution of drugs and medical supplies;
- (d) collect information and provide regular reports to the national and county governments on the status and cost-effectiveness of procurement, the distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and on any other aspects of supply system status and performance which may be required by stakeholders;
- (e) support county governments to establish and maintain appropriate supply chain systems for drugs and medical supplies.

(2) The Cabinet Secretary shall, in consultation with the Authority and the appropriate county government organs, determine the requirement of drugs and medical supplies in public health facilities.

5. Board of Directors

(1) The management of the Authority shall vest in a Board of Directors which shall comprise of—

- (a) a non-executive chairperson appointed in accordance with subsection (2);
- (b) the Principal Secretary of the ministry for the time being responsible for health or a representative designated in writing by the Principal Secretary;
- (c) the Principal Secretary, of the ministry for the time being responsible for finance or a representative designated in writing by the Principal Secretary;
- (d) the Principal Secretary for the time being responsible for matters related to devolved government or a representative designated in writing by the Principal Secretary;
- (e) four other persons appointed in accordance with subsection (3);
- (f) the chief executive officer of the Authority who shall be an *ex officio* member.

(2) The chairperson shall be competitively recruited and appointed by the President from amongst persons who—

- (a) have at least a university degree in a relevant discipline;
- (b) have at least fifteen years experience in matters relating to healthcare or business management;
- (c) satisfy the requirements of Chapter Six of the Constitution.

(3) The persons referred to in subsection (1)(e) shall be competitively recruited and appointed by the Cabinet Secretary from amongst persons who—

- (a) have at least a university degree in a relevant discipline;
- (b) have at least ten years experience in management or in the health sector; and
- (c) satisfy the requirements of chapter six of the Constitution.

(4) In making the recruitment and appointment under subsection (3), the Cabinet Secretary shall ensure that the appointments fulfill the requirements of the gender and regional balance as enshrined in the Constitution and that at least one person is appointed from each of the following categories—

- (a) a procurement or supply chain management specialist;
- (b) a pharmacist experienced in drug and medical supplies management; and
- (c) one person with knowledge and experience in finance or commerce.

(5) The chairperson and the directors appointed under subsection (1)(e) shall, serve for a term of three years, and shall be eligible for re-appointment for one further term of three years.

(6) The procedure for the conduct of business and affairs of the Board shall be as set out in the Schedule.

6. Powers of the Board

(1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) levy fees for services rendered by the Authority as may be determined from time to time by the Board;
- (e) open such banking accounts for the funds of the Authority as may be necessary;
- (f) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 18;

- (g) incorporate, develop and operate a division or subsidiary of the Authority for the procurement, storage and supply of medical supplies to health facilities and institutions on a competitive and commercial basis but such commercial service shall be conducted without prejudice to the ordinary non-commercial supply system to public facilities;
- (h) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance or for the performance of its functions under this Act;
- (i) perform or undertake any other activity that may be necessary for the fulfillment of any of the functions of the Authority under this Act.

7. Remuneration of directors

The Authority shall pay the directors such remuneration, fees or allowances as it may determine on the advice of the Salaries and Remuneration Commission.

8. Chief Executive Officer

(1) There shall be Chief Executive Officer of the Authority who shall be competitively recruited by the Board and appointed by the Cabinet Secretary and whose terms and conditions of service shall be determined by the Board, upon the advice of the Salaries and Remuneration Commission, in the instrument of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under subsection (1) if the person—

- (a) holds a minimum of a first degree in pharmacy or medicine;
- (b) holds a postgraduate degree in business management or postgraduate training in supplies management;
- (c) possesses at least five years experience in senior management; and
- (d) satisfies the requirements of chapter six of the Constitution.

(3) The Chief Executive Officer shall—

- (a) be an *ex officio* member of the Board with no right to vote;
- (b) be the secretary to the Board; and
- (c) subject to the directions of the Board, be responsible for the—
 - (i) day to day running and operation of the Authority;
 - (ii) administration, organization and control of staff of the Authority;
 - (iii) management of funds, property and affairs of the Authority;
 - (iv) implementation of policies and programmes of the Authority and reporting thereon to the Board;
 - (v) development of operational plans for achieving the objectives of the Authority; and
 - (vi) performance of any other function necessary for the implementation of this Act, as may be determined by the Board.

(4) The chief executive officer shall, serve for a term of four years and shall be eligible for re-appointment by the Cabinet Secretary for one further term.

[Act No. 25 of 2015, Sch.]

9. Removal of Chief Executive Officer

The Board may remove the Chief Executive Officer in accordance with his or her terms and conditions of service for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would lawfully justify removal from office under the terms and conditions of service.

10. Staff of the Authority

The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine, upon the advice of the Salaries and Remuneration Commission.

11. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

12. Protection from personal liability

(1) No matter or thing done by any director of the Authority or by any officer, employee, agent or servant thereof shall, if the act or omission was done *bona fide* for the purpose of executing a function, power or duty under the Act, render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, or any work.

13. Common seal

(1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III – FINANCIAL PROVISIONS

14. Funds of the Authority

(1) The funds of the Authority shall comprise of—

- (a) such monies as may be appropriated by Parliament through a budget line to the authority for purposes of carrying out the functions of the Authority;
- (b) such fees, monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any written law;
- (c) all monies from any other source provided for or donated or lent to the Authority; and
- (d) such monies as may be payable to the Authority pursuant to this Act or any other written law.

(2) There shall be made to the Authority, out of monies provided by Parliament by virtue of paragraph 13 of the Kenya Medical Supplies Agency Order, 2000 (L.N. 17/2000), for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

(3) Unless Treasury otherwise directs, the balance of the funds of the Authority at the end of the financial year shall be retained for the purposes for which the Authority is established.

15. Financial year

The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

16. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of directors and staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates of the Authority without the consent of the Cabinet Secretary.

17. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act (No. 12 of 2003).

18. Investment of funds

The Board may invest any of the funds of the Authority in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART IV – MISCELLANEOUS PROVISIONS**19. Manner of discharge of functions**

(1) In discharging its functions under this Act the Authority shall put into place measures to ensure—

- (a) maximum efficiencies;
- (b) benefit from economies of scale;
- (c) efficacy, safety, quality and affordability of drugs and medical supplies procured;
- (d) a steady supply of drugs and medical supplies to public health facilities;
- (e) maintenance and sustenance of strategic reserves of essential medicines and medical supplies;
- (f) application of sound commercial principles in the procurement, storage and distribution of drugs and other medical supplies;
- (g) the carrying out of technical or laboratory analysis of drugs and medical supplies to determine their suitability for procurement, use, storage or disposal by the Authority so as to ensure their compliance with the standards set by the relevant law;
- (h) timely distribution of drugs and medical supplies to health facilities;
- (i) a feedback mechanism to its consumers;
- (j) an effective monitoring and evaluation mechanism; and
- (k) availability of information relating to its operations.

(2) The Authority may make available its facilities for use for educational purposes on such terms and conditions as the Board may consider necessary.

20. Duty of disclosure

Every public officer shall be under a duty to disclose to the Authority any information that the Authority may require for the proper performance of its functions under this Act.

21. Regulations

(1) The Cabinet Secretary may, on recommendation of the Authority, make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) provide manner of operationalisation of any subsidiary or commercial service of the Authority;
- (c) provide for the manner in which the Authority may facilitate counties in adopting appropriate systems for requisition of drugs and medical supplies from the Authority to their health facilities;
- (d) provide for the manner of determination of drugs and medical supplies needs for the national and county governments;
- (e) provide for the manner in which the Authority shall collect and disseminate data on drugs and medical supplies consumption;
- (f) provide for the composition and quantities of the drugs and medical supplies to be stored in the national strategic reserve and the manner of utilizing the reserve.

22. Repeal of L.N. 17/2000

(1) The Kenya Medical Supplies Agency Order, 2000 (L.N. 17/2000) is repealed.

(2) Notwithstanding the repeal under subsection (1), the provisions of paragraph 13 of the Kenya Medical Supplies Agency Order, 2000 shall continue to apply to the Authority in accordance with section 14(2) of this Act.

23. Transitional provisions

(1) In this section—

“**Agency**” means the Kenya Medical Supplies Agency established under the State Corporations Act (Cap. 446);

“**appointed day**” means the day upon which this Act comes into operation.

(2) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the Agency, shall by virtue of this subsection, vest in the Authority.

(3) On the appointed day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the Agency shall, by virtue of this subsection, be deemed to be vested in, imposed on or enforceable against the Authority.

(4) On the appointed day, any person who, immediately before the commencement of this Act, was a member of staff of the Agency shall be deemed to be a member of staff of the Authority for the unexpired period of his or her service.

(5) On the appointed day, any person who immediately before the commencement of the Act held the office of member of the former Board, appointed under paragraph 4(2) of the Order, shall, subject to the provisions of this Act, serve as a member of the Board under subsection (1)(d) of section 5 for the remainder of the term of the member in office or for a non-renewable term of three years, whichever is sooner.

(6) Any reference in any written law or in any document or instrument to the Agency shall on and after the appointed day, be construed to be a reference to the Authority.

(7) The annual estimates of the Agency for the financial year in which the appointed day occurs shall be deemed to be annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Board in such manner as the Cabinet Secretary may approve.

(8) The administrative directions made by Agency or by the Cabinet Secretary which are in force immediately before the appointed day shall, on and after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

SCHEDULE

[Section 5.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Vacation of office

(1) A member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member —
 - (i) has been absent from three consecutive meetings of the Board without its permission;
 - (ii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;
 - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
 - (iv) contravenes chapter six of the Constitution;
 - (v) is otherwise unable or unfit to discharge his functions.

2. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be half of the total members including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board but the members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

3. Committees of the Board

(1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

4. Disclosure of interest

(1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

5. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

