Republic of Kenya

GUIDELINES FOR TERMS AND CONDITIONS OF SERVICE FOR CHANCELLORS OF PUBLIC UNIVERSITIES, BOARD CHAIRPERSONS, BOARD MEMBERS AND STAFF OF STATE CORPORATIONS

(Revised) JULY 2017

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1.0 INTRODUCTION

1.1 Context and background

The State Corporation Act Cap. 446, Section 2, defines 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 enactment of 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.

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 management of state corporations (commonly referred to in other jurisdictions as State Owned Enterprises) has however 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 (EOCD) is credited with spearheading the development of governance principles for State Owned Enterprises. With time these have been adopted and domesticated by difference countries within and outside the OECD.

In November 2004 the Government made the first attempt towards developing some governance principles by issuing Guidelines on terms and conditions of service for Chairmen, Members of the Board and Chief Executive Officers of State Corporations with a view to introduce a standardized way of recruitment of Chief Executive Officers and management staff and determining remuneration of Chairmen, Board members and other employees of State Corporations. By issuing the 2004 Guidelines, the Government made it clear that State Corporations had to embrace modern business management practices. All corporations were therefore expected to develop corporate strategies with a clear vision, mission, goals, objectives and a set of desirable values.

The above policy was buttressed through issuance of MWONGOZO; The Code of Governance for State Corporations, vide Executive Order No. 7 of 25th March, 2015. MWONGOZO requires all State Corporations to build the requisite institutional and technical capacity necessary for delivery of services to the citizenry and implementation of Government programs. Such can however not be realized without an enabling work and labour environment.

1.2 Objectives of the Guidelines

The Guidelines have been developed to provide:

i) A basis for revision of the 2004 Guidelines and align them to the provisions of the Constitution of Kenya 2010;

ii) Consistency and uniformity in development and review of terms and conditions of service State Corporations;

iii) Framework for classifying State Corporations based on their functions

iv) A clear institutional framework for the development, determination and approval of terms and conditions of service in State Corporations;
v) A platform for consultations with relevant stakeholders;
vi) A framework for streamlining and harmonizing pay and benefits in the State Corporations;
vii) A mechanism for stemming labour unrest in State Corporations; and
viii) An impetus for effective and efficient governance and management of State Corporations.

1.3 Situational Analysis

State Corporations have existed in Kenya from the pre-independence era. However until 2004 there was no homogeneous framework for determination of terms and conditions of service in these institutions.

Although the State Corporations Act, Cap. 446 was enacted in 1987 and created an institutional framework for determination of such terms and conditions of service, it was not until 2004 that the State Corporations Advisory Committee (SCAC) was constituted. Upon constitution, SCAC developed the 2004 Guidelines on '*terms and conditions of service for Board Chairpersons, Board members, Chief Executive Officers and staff of State Corporations*' which were issued to the service in the same year.

The 2004 Guidelines clustered State Corporations in eight (8) broad categories based on mandate and core functions. The eight categories are: Financial; Commercial/Manufacturing; Regulatory; Public Universities; Training and Research; Service; Regional Development Authorities; and Tertiary Education/Training.

The eight (8) clusters formed the basis for remuneration. The Financial category was the highest while Tertiary Education/Training Institutions category was the lowest in terms of remuneration. However, some State Corporations have over the years requested for reclassification to the higher categories in pursuit of higher remuneration.

The guidelines formed the basis for determining the terms and conditions of service for Board Chairpersons, Board Members and Chief Executive Officers within their respective categories. Similarly management staff salaries were pegged on the stipulated salary bands for the Chief Executive Officer.

While the Guidelines have served the intended purpose well, the following challenges have emerged:-

a) Lack of a mechanism linking remuneration, rewards, incentives and sanctions to Board and staff performance;
b) Failure to relate the uniqueness of the categorization of State Corporations to the allowance and other incentives for Board Chairpersons and members;
c) Lack of a framework for remunerating Chancellors of Public Universities; and
d) Unclear justification for the current clustering of some State Corporations with similar mandates in different categories; and
e) Weak basis for rationalizing the differentiation of State Corporations in the current categorization

1.4 Rationale

The review of the Guidelines has been necessitated by the following:

(i). Provisions of the Constitution

The Constitution under Article 232 (I) requires, under (b) efficient, effective and economic use of resources (c) responsive, effective, impartial and equitable provision of services. The Constitution has also created new organs, highlighted in 3.1 and 3.2, and has assigned them roles in the management of State Corporations. There is therefore a need for guidelines that will enhance the envisaged efficiency as well as mainstream the newly created organs in the governance of State Corporations.

(ii). Mwongozo

MWONGOZO which is the code of Governance for State Corporations require that all State Corporations build requisite institutional and technical capacity necessary to deliver services to the citizenry. This cannot be realized without an enabling work and labour environment. These guidelines will facilitate creation of a conducive working environment.

(iii). Appointment of Chancellors

Prior to 2003 the Head of State was also the Chancellor of all the public universities. Currently chancellors for public universities are appointed by the President. The guidelines will provide for the remuneration of the Chancellors.

(iv). Emerging Challenges.

As stated in number 1.3 above, new challenges have emerged that cannot be addressed within the existing guidelines hence the need for review. The Constitution has placed greater emphasis on efficient delivery of services by all public entities and there is therefore need to realign the guidelines to these constitutional demands.

1.5 Definition of Scope

Terms and conditions of service govern the employment relationship between an employer and employee. These may include salaries, allowances, benefits, and working conditions amongst others. These guidelines provide a systematic approach in reviewing terms and conditions of service in State Corporations. They shall be the standard guide for Boards of State Corporations and other oversight entities as they develop or review any terms and conditions of service in State Corporations.

The Guidelines are applicable to all State Corporations and shall apply to:

a) Chancellors of Public Universities
b) Board Chairpersons
c) Board members
d) Chief Executive Officers
e) All Staff

1.6 Legal Framework

The following laws and regulations have been considered while developing and reviewing the terms and conditions of service for State Corporations:

a) The Constitution;

b) The Public Service Commission Act;

c) The State Corporations Act;

d) The Employment Act and other Labour laws;

e) The Persons with Disabilities Act;

f) The Public Finance Management Act;

g) The Income Tax Act;

h) The Leadership and Integrity Act;

i) The Public Officer Ethics Act;

j) The Retirement Benefits Authority Act;

k) The National Hospital Insurance Fund Act;

l) The National Social Security Fund Act;

m) The Collective Bargaining Agreements arrangement;

n) The Fair Administrative Act; and

o) Public Service Values and Principles Act;

Consideration will continue to be made to comply with any other relevant laws and regulations

3.0 INSTITUTIONAL FRAMEWORK

3.1 Public Service Commission

The Commission will be responsible for reviewing and making recommendations to the National Government in respect of conditions of service. In this regard, the Commission will take responsibility for approval of Remuneration Guidelines or review of terms and conditions of service for State Corporations.

Article 234 (2) e of the Constitution provides that the Commission shall ensure that the Public Service is efficient and effective. Further, Article 234(2)(g) of the Constitution mandates the Public Service Commission to set and review conditions of service for public servants. Pursuant to thses provisions, Article 230 (5) of the Constitution provides that the Public Service Commission may delegate, in writing, with, or without conditions any of its functions and powers under this Article to one or more of its members or any officer, body or authority in the Public Service.

3.2 Salaries and Remuneration Commission

The Salaries and Remuneration Commission shall advise on the proposed reviews and Guidelines on remuneration and benefits for State Corporations as shall be recommended by the Public Service Commission.

Article 230 of the Constitution provides for the establishment of the Salaries and Remuneration Commission. Article 230 (4) (b) provides that the Salaries and Remuneration Commission shall provide advice to the national and county governments on the remuneration and benefits of all other public officers including the State Corporations

3.3 The National Treasury

The National Treasury will advise on the Government's ability to accommodate the resultant expenditure arising from the proposed review for State Corporations whose staff payroll is serviced by the Exchequer.

The Public Finance Management Act 18/2012 Section 11 and 12 has established The National Treasury with the responsibility to formulate, implement and monitor macro-economic policies involving expenditure and revenue.

3.4 The Parent Ministry

The parent Ministry will be a key stakeholder in terms of initiating development and reviews and providing guidance on conditions of service for cadres of staff within a State Corporation. The Ministry will consider proposed reviews of remuneration structures from individual State Corporations, in terms of Section 5(3) of the State Corporations Act, and recommend the same for consideration by SCAC.

3.5 State Corporations Advisory Committee (SCAC)

SCAC will be involved in all reviews relating to State corporations and agencies. In most cases, SCAC shall initiate such reviews in consultation with the Public Service Commission. It will also oversee implementation of the review in State Corporations and ensure that all State Corporations have aligned their individual remuneration structures to the approved Guidelines.

SCAC is established under section 26 of the State Corporations Act Cap 446 and its mandate mainly outlined under section 27. Section 5 (3) of the Act requires SCAC to provide advisory services to the Cabinet Secretaries regarding terms and conditions of service for staff. Section 10 of the ACT empowers SCAC to provide guidelines for terms and conditions of service for Chairpersons and members of the boards of State Corporations. The mandate of SCAC in the realm has been reinforced through delegation by the public Service Commission.

4.0 PROCESS FOR DEVELOPMENT AND REVIEW OF TERMS AND CONDITIONS OF SERVICE IN STATE CORPORATIONS

4.1 Purpose

These Guidelines will ensure development of clear, consistent and simplified criteria to be used in reviewing terms and condition of service in State Corporations. They define the factors to be considered, the stakeholders and provide a checklist for the review process.

4.2 Development of Review Proposal

SCAC will, under the guidance of the Public Service Commission, develop draft reviews of terms and conditions of service for State corporations.

4.3 Proposals from Trade Unions

All proposals from the union on terms and conditions of service will be submitted to SCAC. SCAC will consider the proposals from the union and submit to the Public Service Commission for purposes of initiating the review process.

4.4 Monitoring, Evaluation and Reporting

Chief Executive Officers of State corporations shall be required to prepare and submit to SCAC quarterly reports stating the level of compliance with the developed or reviewed terms and conditions of service by the15th of months of October, January, April and July of every year. SCAC will eventually make quarterly reports to the Public Service Commission on the same.

4.5 Review of the Framework

These Guidelines shall be reviewed from time to time as circumstances shall determine.

5.0 CLASSIFICATION OF STATE CORPORATIONS

5.1 Functional Classification of State Corporations

As stated earlier, several challenges have been experienced while implementing the terms and conditions of service under the categorization of 2004. To obviate the same, State Corporations have now been classified into five functional clusters as follows:

a) Public Enterprises

b) Regulatory Bodies

c) Executive Agencies

d) Public Universities and tertiary education/training institutions

e) Research institutions

This classification has taken a sharper look at the function of each state corporation and considered appropriate governance structure to enable it undertake its mandate more effectively. The classification creates a uniqueness for the clusters to forestall any likelihood of a need for 'cross-border re-classification'.

Each functional cluster has been again delineated into sub-clusters (A, B, C) in consideration of:

a) Where the state corporation has been previously categorized

b) The nature of the mandate of the Institution

c) Performance (financial, performance contracting etc)

d) Implementation of flagship projects and/or programs

e) Complexity (Geographical spread, staff complement and skill sets)

Below are the details of the functional classification.

5.2 Public Enterprises (PE)

Public Enterprises are commercial entities bearing one or more of the following characteristics:

i) Their existence is in pursuit of profit.

ii) They are self-financing

iii) They operate on commercial basis in competition with other players in their industry.

iv) They undertake Government projects and/or programs that would ordinarily be the domain of private sector companies

In this respect, the Public Enterprises will be required to be financially independent in operations and any projects they undertake or any public goods or services they produce and deliver will be at a cost to the Government.

The State Corporations classified as Public Enterprises (PE) are at ***Annex I***

5.3 Executive Agencies (EA)

This class comprises State Corporations whose business is to facilitate effective and efficient delivery of Government services and programs in line with the individual Ministry's Strategic plans, but operating at "arm's length" from the Parent Ministry. They are not involved in policy formulation or industry regulation but essentially provide services, which can be at nominal fee or cost recovery basis or even free. Their operations will be funded publicly through the exchequer and Appropriations in Aid realizable from services provided.

The State Corporations classified as Executive Agencies (EA) are at ***Annex II***

5.4 Independent Regulators (IR)

These are State Corporations whose functions as specified in the enabling instruments are of regulatory nature. Their role is to set standards and regulate a given sector and/or industry. They operate at arm's length from the parent ministry but remain accountable to the ministry for regulation of the designated industry or sector.

This class of State Corporations should be rationalized in accordance with the industry or sector they regulate. The proposal to cluster regulators envisages a future where there is a single regulator for each sector as is the case for the Tourism and Energy Sectors.

Independent Regulators will operate on business principles but on cost recovery basis and will therefore not be profit driven. Operations of these institutions may be funded through levies on the industry or sector regulated but approved by the responsible minister and the Treasury in Consultation with industry players.

The State Corporations classified as Independent Regulators (IR) are at ***Annex III***

5.5 Public Universities and Tertiary Training Institutions (PUC)

These will include Chartered Public Universities, Public University Colleges and incorporated Tertiary Training Institutions/Colleges. They operate under their enabling legal instruments on business principles but not for profit. For this reason they may be funded publicly through the exchequer.

The State Corporations classified as Public Universities and Tertiary Training Institutions (PUC) are at *Annex IV*

5.6 Research Institutions (RI)

Like Public Universities, Research Institutions operate under their enabling legal instruments on business principles but not for profit. For this reason they will be funded publicly through the exchequer and any revenues realized from operations will be Appropriations in Aid.

The State Corporations classified as Research Institutions (RI) are at ***Annex V***

5.7 Re-Classification and Classification of new State Corporations

When a new State Corporation has been established, as defined under the State Corporations Act Cap.446, the classification of such a Corporation will be referred to the State Corporations Advisory Committee for consideration on a case by case basis.

Any need for re-classification shall be made in terms of Section 5(3) and 10 of the State Corporations Act, Cap.446.

6.0 TERMS AND CONDITIONS OF EMPLOYMENT FOR CHIEF EXECUTIVE OFFICERS AND STAFF OF STATE CORPORATIONS

6.1 Context for Remuneration Guidelines

Section 5(3) of the State Corporations Act, Cap. 446 provides for approval of the Terms and Conditions of Service for all staff of State Corporations by the Cabinet Secretary in Consultation with SCAC. The role of SCAC in this realm was again buttressed through the Public Service Commission's delegation instrument. The instrument, inter alia, requires SCAC to approve the conditions of service for staff of State Corporations.

As stated under the Institutional framework, the responsibility for determination of the terms and conditions of service in State Corporations remains the mandate of the Public Service Commission (PSC). However the mandate of PSC in the determination of the terms and conditions of service for State Corporations, as any other service commission, is subject to the constitutional advisory role of the Salaries and Remuneration Commission.

The current practice has been for State Corporations to develop their pay structures properly aligned to the salary bands of the Category in which they are classified. It is then incumbent upon the Board of Directors of the respective State Corporation to recommend the same to the parent Ministry which upon being satisfied seeks the advisory of SCAC prior to approval in terms of Section 5(3) of the State Corporations Act, Cap. 446.

6.2 Remuneration framework for State Corporations

The current terms and conditions of employment for Chief Executive Officers and staff of state corporations are contained in the appointment letter which is annexed to the 2004 Guidelines. Those guidelines have served well in guiding the remuneration levels in State Corporations. However, the vagaries of inflation and other labour dynamics have rendered those guidelines redundant.

Consequently, the new remuneration packages for Chief Executive Officers of State Corporations shall be based on the salary guidelines as shown at **Annex VI**.

The entry point to the new salary bands will be at the minimum for all state corporations. However, where circumstances dictate otherwise, the entry point should not exceed the midpoint of the salary band. Any variation must be properly justified and in terms of section 5(3) of the State Corporations Act, Cap. 446.

6.3 Duties and responsibilities of the Chief Executive Officer

Chief Executive Officers will be responsible for the implementation of the Board decisions in a results oriented and timely manner to achieve the Corporations' goals, objectives and agreed performance targets. This will entail *inter alia:*

i) Carrying out the day to day business of the Corporation.

ii) Developing of and recommending to the Board the long term strategy, business plans, and annual operating budgets; and establishing proper internal monitoring and control systems and procedures.

iii) Coordinating and preparing business related proposals, reports and other submissions for consideration by the Board.

iv) Ensuring that there is effective communication between the management and the Board as well as between different levels of management.

v) Providing leadership to the employees.

vi) Attending to personnel matters including organizational structures, appointments, welfare, training industrial relations, separation and effective management succession plans.

vii) Ensuring continuous improvements in the quality and value of services and products provided by the Corporation.

viii) Ensuring continuous achievement of the Corporation's financial and operating goals and objectives.

ix) Overseeing and ensuring implementation of corporate policies and programmes.

x) Maintaining a conducive work environment for attracting, retaining and motivating employees.

xi) Fostering a corporate culture that promotes ethical practices and good corporate citizenship.

xii) Acting as the principal spokesperson of the corporation.

xiii) Communicating with shareholders and others stakeholders effectively.

xiv) Ensuring compliance with the laws of the country.

xv) Any other responsibilities as may be necessary to achieve the Corporation's objectives.

6.4 Performance Measures

In addition to the above duties and responsibilities, detailed Key Tasks will be agreed between the Chief Executive Officer (CEO) and the Board, and performance reviewed and appraised regularly and documented in meetings of the Board.

6.5 Other Conditions of employment for Chief Executive Officers

a) Duration of contract

Unless provided for under any written law, the contract of employment will be for upto three (3) years renewable once.

b) Remuneration

The Board to determine the remuneration within the approved salary band. The remuneration at the initial appointment shall not be considered beyond midpoint of the salary band for the CEO.

c) Performance related awards

Based on prevailing Government guidelines on incentives, rewards and sanctions.

d) Medical

A CEO will be a member of the Corporation's Group medical scheme and shall be entitled to medical benefits as per the scheme.

e) Leave

As a member of staff, the CEO shall be entitled to leave within the Corporation's HR Policy and Procedures manual.

f) Leave allowance

Leave allowance will be paid in accordance with the Corporations Human Resource Policy and Procedures.

g) Gratuity

Upon successful completion of each contract term, a CEO will qualify for a one-off Gratuity calculated at a rate of 31% of your annual basic salary.

h) Group life and group accident insurance scheme

Entitlement within the provisions of the Corporation's Human Resource Policy and Procedures manual.

i) Official transport

A CEO shall be provided with official transport for use on official duties except when on leave.

If official transport is unavailable, a maximum of the current AA rates will apply when using your personal vehicle for official duties of the Corporation subject to maximum of 1800cc.

j) Telephone service

A CEO will be entitled to telephone facilities within prevailing Government guidelines.

k) Club membership

A CEO shall be entitled to:-

i) Registration to one club

ii) Annual membership fee to one club

l) Subsistence allowance within Kenya

A CEO will be paid subsistence allowance for nights spent on official duty within Kenya away from duty station at the rates approved by the Government from time to time.

m) Subsistence allowance outside Kenya

A CEO will be paid subsistence allowance for days spent on official duty outside Kenya at the prevailing rates approved by the Government from time to time

n) Determination of engagement

Subject to the provisions of the Employment Act the State Corporation may at any time determine the engagement of the CEO by giving him/her one () month's notice in writing, or paying him or her one (1) month's salary in lieu of notice.

The CEO may at any time after the expiration of three months from the commencement of his/her term of engagement, determine his/her engagement by giving to the State Corporation one (1) months' notice in writing, or by paying to the State Corporation one (1) month's salary in lieu of notice.

If the CEO terminates his/her engagement otherwise than in accordance with this agreement he/she shall be liable to pay the state Corporation on demand as liquidated damages one months' salary.

o) Recruitment of Non-citizens

Recruitment of non-citizens shall be governed by the provisions stipulated in ***Annex VI***

7.0 TERMS AND CONDITIONS OF SERVICE FOR UNIVERSITY CHANCELLORS, BOARD CHAIRPERSONS AND MEMBERS OF STATE CORPORATIONS

7.1 Context of allowances payable to Board members.

The 2004 Guidelines, as amended, provide the framework for allowances payable to Board Chairpersons and Board members.

It is acknowledged that it is not possible to fully compensate a Chairperson and Board members for the time devoted to the business of a State Corporation adequately. The guidelines therefore only provide token allowances depending on the ability of individual institutions to finance the expenditure.

These guidelines take into account the fact that State Corporations differ in function, nature, size and scope of their business. In this regard the guidelines have provided benefits based on the uniqueness of different classes of State Corporations as follows:

7.2 Regular Allowances

The benefits payable to Board Chairpersons and members of State Corporations and Chancellors of Public Universities shall be subject to individual entity's ability to finance the expenditure as shown at ***Annex VI***

7.3 Other benefits for Board members

In addition to the allowances, Board Chairpersons and members may be paid the following benefits:

a) Telephone Services for Board Chairpersons and members

i) Telephone airtime of upto a maximum of Kshs. 7,000/= per month for Chairpersons

ii) Telephone airtime of upto a maximum of Kshs. 3,000/- per month for Board members

b) Other Facilities for Chairpersons

i) An office with basic necessities and shared secretarial service where practicable as the chairperson is non-executive.

ii) Official transport as and when there is a need for the Chairperson to use official transport when on official business of a State Corporation.

c) Accommodation allowance for Board Chairpersons and members

This will be paid up to a maximum of Government per diem rates applicable to a Principal Secretary when spending a night away from the usual residence on official business of a State Corporation.

d) Lunch Allowance

This may be paid up to a maximum of Kshs. 2,000 per day when lunch is not provided.

e) Transport

Board Chairpersons and Members may be reimbursed expenses in respect of the cost of travel to and from Board business or reimbursed actual mileage at prevailing AA rates subject to the maximum for 1800cc when they use personal car on Board business. It is however recommended that where a Board member opts to use a personal means of transport, the amount reimbursed should not be more than the most cost effective means of transport.

f) Accident (not life) Insurance Cover

State Corporations should competitively procure personal accident (not life) cover for its Board members in the event of an accident while travelling on Board business.

g) Medical Insurance and basic funeral insurance cover

State Corporations should competitively procure group medical insurance cover (but not life) and basic funeral expenses cover for its Board members up to the following limits:

i) Inpatient cover of up to Kshs. 2 million per year
ii) Outpatient cover of upto Kshs. 100,000 per year
iii) Funeral expenses fixed at Kshs. 100,000 if a member dies while still in office.

The limits are subject to review through government circulars issued from time to time in terms of section 10 of the State Corporations Act, Cap. 446.

Public officers representing Government departments or State Corporations on a Board as per the relevant enabling legal instrument are excluded.

h) Performance Bonus

Following adoption of performance contracting under the State Corporations (Performance Contracting Regulations) 2004 Board members may be paid performance related bonuses. The bonuses will continue to be paid based on guidelines on performance related awards.

8.0 REWARDS AND SANCTIONS IN STATE CORPORATIONS

8.1 Context for Rewards and Sanctions

Whereas the Government has put in place various initiatives for rewarding and sanctioning performance in the State Corporations there is need to have a comprehensive framework that is based on the extent to which an individual employee contributes to the performance of the institution.

The non-integrated approach to the current performance management system does not comprehensively address issues of measurement of performance, recognition of exemplary performance, sanctioning of poor performance and implementation of rewards and sanctions.

The various Rewards and Sanctions initiatives have been implemented in an ad hoc and piecemeal manner in State Corporations. Where implementation has been undertaken there is lack of uniformity and linkage with performance contracting system.

In some instances, cash bonus for exemplary performance has been awarded on individual requests, while sanctions have never been implemented. All sanctions provided in Staff Performance Appraisal System (SPAS) are discipline related which makes it difficult to implement. In addition, the SPAS in its current form has several attributes relating to values and competencies that cannot be objectively measured and rated and yet they are important for overall assessment of an individual employee.

8.2 Objectives of the Rewards and Sanctions framework

The overall goal of performance rewards and sanctions framework is to boost performance and ultimately the productivity of the State Corporations.
The specific objectives of this Rewards and Sanctions framework are to:

(i) Establish a basis for rewarding exemplary performance
(ii) Motivate employees in order to improve productivity
(iii) Encourage competitiveness in service delivery
(iv) Promote innovation and creativity in service delivery
(v) Link rewards and sanctions to measurable performance
(vi) Harmonize the rewards and sanctions applicable to employees
(vii) Promote integrity and transparency in Human Resource Management
(viii) Link individual's Performance Appraisal to Performance evaluation results

(ix) Sanction poor performance.

8.3 Current Rewards and Sanctions

Several initiatives have been developed and implemented to reward exemplary performance and sanction poor performance in the State Corporations. Some of the initiatives include monetary and non-monetary awards as follows:-

8.3.1 Non-Monetary

(i) Letters of Commendation
(ii) Promotions
(iii) Long Service Awards; and
(iv) Excellent Achievers Awards

8.3.2 Monetary

(i) Bonuses
(ii) Shopping vouchers; and
(iii) Incremental credit

8.3.3 Current sanctions

(i) Warning letter
(ii) Reprimand
(iii) Surcharge
(iv) No increment
(v) Demotion
(vi) Dismissal

8.4 Administration of Rewards and Sanctions in the State Corporations

8.4.1 Performance Management

The performance management system shall be a critical component of the human resource management function in State Corporations. Its overall objective shall be to manage and improve performance in an organization by enabling a higher level of employee participation and involvement in planning, delivery and evaluation of work performance

8.4.2 Performance Contracting

The objective of the proposed Rewards and Sanctions framework under performance contracting is to reward and sanction employees according to their performance. Successful implementation of the rewards and sanctions is based on three key sub-systems that include: Performance Contracting, Performance Evaluation and Performance Rewards and Sanctions.

8.5 Staff Performance Appraisal System (SPAS)

Staff Performance Appraisal is a systematic way of planning, reviewing and assessing the performance of an employee during a specified period of time based on agreed performance targets. SPAS is a tool to measure, improve and recognize the performance of the employee.
The objectives of SPAS are to:-

(i) Link individual performance targets with organizational strategic objectives and work plan;
(ii) Promote communication between Appraisee and Supervisor with continuous feedback on work progress; set the basis on which an officers performance is monitored and evaluated as stipulated in the individual work plan;
(iii) Align operational and financial performance targets with budgetary provisions.
(iv) Assess the learning and development needs of staff on a timely basis;
(v) Provide information for decision making on administrative and human resource issues such as renewal of contracts, promotions, delegation of duties, training, deployment, rewards and sanctions**.**

8.5.1 Rewards and Sanctions under the SPAS

Staff Appraisal Systems are administered as follows:

Achievement of Performance Target	Performance Grade	Performance Level	Reward/Sanction
Achievement of ≥100% & above performance target	Excellent	100% and above	• Thirteenth salary • Roll or honour • Employee of the year award.
Achievement of the agreed performance target up to 99% of the target	Very good	90 – 99%	• Letter of commendati on.
Achievement between 70%	Good	70 – 89%	• Pull up letter

and 89% of the agreed performance target			
Achievement between 50% and 69% of the agreed performance target	Fair	50 – 69%	• Cautionary letter.
Achievement below 50% of the agreed performance target	Poor	Below 50%	• 1st year – censure • 2nd year – warning letter 3rd year – disciplinary action

8.5.2 Thirteenth Month Salary

A financial bonus equivalent to one month basic salary will be awarded for exemplary performance. Thirteenth month basic salary will be awarded based on individual performance and respective contribution to the State Corporation's performance based on individual composite score for "Excellent" performance.

8.5.3 Letters of Commendation

A letter of commendation will be issued to an employee for their distinguished performance that contributes to increased output and the State Corporation's efficiency.

8.5.4 Long Service Award

This will be awarded to an employee who has demonstrated non-interrupted exemplary contribution to the State Corporation's performance for a minimum period of 15 years.

8.5.5 Paid Vacations

Paid vacations (within Kenya) will be granted to employees who have made significant contribution to the service delivery in their respective areas in addition to attaining excellent or very good performance. This will apply to those who are below management level.

8.5.6 Contract Renewal

Contract renewals will be based on performance subject to the employee's terms and conditions of service

8.5.7 Roll of Honour for Exemplary Performance

Names of employees who demonstrate exemplary performance will be published in the State Corporations Roll of Honour annually.

8.5.8 Employee of the Year Award

The State Corporation will identify employees who demonstrate exemplary performance all through the year and reward them using a criteria set out by the Performance Management Committee.

8.5.9 Innovation and Creativity Award

This award will be given in recognition of the contribution and input of the employees that serve to create value addition, which may lead to overall cost reduction, enhance revenue, increase efficiency in project management and make processes simpler and faster. An employee shall be awarded at a rate determined by the State Corporation from time to time

8.5.10 Sanctions for poor performance

The sanctions under this Framework are purely performance. However, the framework recognizes that poor performance may sometimes be attributed to exogenous factors. In addition, disciplinary related sanctions will be administered according to the laid down disciplinary procedures.

8.6 Implementation of Rewards and Sanctions

The Committee responsible for Rewards and Sanctions will be also responsible for the administration and review of the Rewards and Sanctions framework. The Committee will also handle cases of appeals after employees have exhausted all review mechanisms under the framework.

8.6.1 The Committee will perform the following functions:-

(i) Co-ordinate implementation of the Rewards and Sanctions framework in the State Corporations.

(ii) Monitor, evaluate and report on the implementation of the Rewards, Recognition and Sanctions framework.

8.6.2 Functions of the Committee

The functions of the Committee shall be as follows:-

(i) Ensure that the integrity and credibility of the overall process of the rewards and sanction system is safeguarded and maintained at all times.
(ii) Ensure that the overall assessment of employee performance is within the context of the State Corporation's performance as evaluated through the employee Performance Appraisal System.
(iii) Ensure linkage between the State Corporation's performance and individual performance.
(iv) Hold quarterly performance review meetings.
(v) Ensure that the performance of all officers is evaluated and feedback on performance is relayed in writing at the end of each year.
(vi) Make recommendations to the Chief Executive on the application rewards or sanctions.
(vii) Review cases of appeals on appraisal ratings between supervisors and appraises.
(viii) Develop implement the internal monitoring, evaluation and reporting system.

8.6.3 Rules of Conduct for the Committee

(i) Members of the committee shall be expected to perform their duties with diligence, integrity, impartiality and confidentiality.
(ii) In the event that there is disagreement between the supervisor and the appraise on assessment of performance, the second supervisor's comments will be considered by the Committee in making a recommendation to the Chief Executive.
(iii) Members of the Committee will not discuss or make recommendations in respect to their own performance reports. The Chief Executive shall complete the performance appraisal reports for the members of the Committee and make appropriate recommendations to the Board.

8.7 Guiding Principles for rewards and sanction

The implementation of Rewards and Sanctions framework will be guided by the following principles:

(i) **Performance Standards:** framework for setting realistic and measurable standards of performance and for supporting employees to achieve the standards set should be established.
(ii) **Fairness:** The administration of rewards and sanctions should be consistent, prompt, impartial and reasonable and applied without discrimination.
(iii) **Natural justice:** Administration of sanctions should be guided by the principles of natural justice.

(iv) **Equal opportunities:** Equal opportunities should be availed to all employees.

(v) **Timeliness:** Application of rewards and sanctions should be done in a timely manner in accordance to existing regulations.

(vi) **Right of appeal:** An employee shall have a right of appeal against any sanction or reward in line with prevailing regulations.

(vii) **Effective Communication mechanism:** To ensure provision of regular feedback on employees' performance.

(viii) **Coaching and mentoring:** Mechanisms should be put in place to mentor and coach employees for performance improvement.

(ix) **Professionalism:** Uphold professional ethics and standards.

8.8 Directors fees

Directors fees shall be payable to board members who serve in State Corporations that are incorporated under the Companies Act. The payment shall be determined within the provisions of the Companies Act.

8.9 Bonus Payment

1.9.1 Payment of bonus to staff shall be made within the provisions of section 8.5.4

1.9.2 Payment f bonus to Board of Directors shall be premised on:-

a) Performance contract results (Not below very good category)
b) Undertaking Board self-evaluation
c) Ability of the institution to pay (budgetary provision)

Annex VI

Allowances and Benefits for Chancellors of Public Universities, Board Chairpersons & Members of State Corporations

CLASSIFICATION	Monthly honoraria for Chancellors and Board Chairpersons	Monthly Retainer for Board members	Sitting Allowance for Board Chairpersons and members
PUBLIC ENTERPRISES (PE)			
PE (A)	Up to Kshs. 150,000	Up to Kshs. 50,000	Up to Kshs. 30,000
PE (B)	Up to Kshs. 130,000	Up to Kshs. 40,000	Up to Kshs. 25,000
PE (C)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 20,000
PE (D)	Up to Kshs. 80,000	Up to Kshs. 20,000	Up to Kshs. 20,000
INDEPENDENT REGULATORS (IR)			
IR (A)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
IR (B)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
EXECUTIVE AGENCIES (EA)			
EA (A)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
EA (B)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
EA (C)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 20,000
RESEARCH INSTITUTIONS (RI)			
RI (A)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
RI (B)	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 25,000
PUBLIC UNIVERSITIES AND TERTIARY EDUCATION/TRAINING INSTITUTIONS			
CHARTERED PUBLIC UNIVERSITY	Up to Kshs. 150,000	Up to Kshs. 30,000	Up to Kshs. 25,000
PUBLIC UNIVERSITY COLLEGES	Up to Kshs. 130,000	Up to Kshs. 30,000	Up to Kshs. 25,000
TERTIARY EDUCATION/ TRAINING INSTITUTIONS	Up to Kshs. 100,000	Up to Kshs. 30,000	Up to Kshs. 20,000

Note: In addition to the monthly honoraria, Chancellors of Public Universities shall be eligible for reimbursement of the costs of travel and accommodation, while on official duty of the organization, at the rate applicable to Council Chairpersons.