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NO. 11 OF 2001

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NO. 11 OF 2001

KENYA WATER INSTITUTE ACT

[Date of assent: 31st December, 2001.]

[Date of commencement: 1st July, 2002.]

An Act of Parliament to establish the Kenya Water Institute, to provide for its incorporation, powers and functions, and for connected purposes

[Act No. 11 of 2001, L.N. 116/2002.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Kenya Water Institute Act, 2001.

2. Interpretation

In this Act, unless the context otherwise requires-

“**academic board**” means the academic board of the Institute constituted under section 7;

“**Council**” means the Governing Council of the Institute established under section 5;

“**chairman**” means the chairman of the Council appointed and designated as such under section 5(2);

“**Director**” means the Director of the Institute appointed and designated as such under section 9;

“**Institute**” means the Kenya Water Institute established under section 3;

“**Minister**” means the Minister for the time being responsible for matters relating to water;

“**National Council of Non-Governmental**” means the National Council of Non-Governmental organizations established under the Non-governmental Organizations Co-ordination Act (No. 19 of 1990);

“**student**” shall include both long term and short-term participants of the Institute.

PART II —ADMINISTRATION

3. Establishment of the Institute

(1) There is established an Institute to be known as the Kenya Water Institute.

(2) The Institute 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 or otherwise acquiring, holding and alienating movable or immovable property; and
- (c) subject to the provisions of this Act, of doing or performing all such acts or things as may by law be done or performed by a body corporate.

(3) The Institute shall be the successor to the Institute known as the Kenya Water Institute existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Institute existing at the commencement of this Act shall be automatically and fully transferred to the Institute and any reference to the Kenya Water Institute in any contract or document shall, for all purposes, be deemed to be a reference to the Institute established under subsection (1).

4. Objects of the Institute

(1) The objects of the Institute shall be-

- (a) to provide directly or in collaboration with other institutions of higher learning, services in human resource development, consultancy, research and development in the water sector on a commercial basis to the public sector, state corporations, local authorities, the private sector and all other persons, local or foreign, who may request for such services from the Institute;
- (b) to provide training programmes, seminars, and workshops and producer publications aimed at maintaining standards in the water and sanitation sector;
- (c) to provide a forum for effective collaboration between the public and private sectors and other interested parties for the development of the water and sanitation sectors; and
- (d) to conduct examinations and award diplomas, certificates and other awards to successful candidates.

(2) Admission to the Institute of candidates for diplomas or other awards of the Institute shall be open to all persons accepted as qualified for such admission without distinction on the basis of ethnic origin, sex or creed being imposed on any person as a condition of his becoming or continuing to be a student at the Institute.

5. Governing Council of the Institute

(1) There shall be a Governing Council of the Institute which shall consist of-

- (a) a chairman appointed by the Minister;
- (b) the Permanent Secretary to the Treasury;
- (c) the Permanent Secretary to the Ministry for the time being responsible for local authorities;
- (d) the Director of Water Development;
- (e) the Director of the Institute, who shall be secretary;
- (f) a representative of the public universities who shall be appointed on a three year rotational basis on the advice of the said universities;
- (g) the following persons who shall be appointed by the Minister-
 - (i) one representative of private sector managers of community based water and sanitation programmes;
 - (ii) one representative of a registered local Non-Governmental Organization involved in activities related to the water sector, nominated by the National Council of Non-Governmental Organisations;
 - (iii) one representative of professional bodies, the activities of which relate to the water sector; and

(iv) one representative of registered water users associations.

(2) The chairman shall be appointed from amongst persons of high integrity who have management experience and strong working knowledge of the water sector.

(3) The chairman appointed under section 5(1) shall be a person qualified in terms of paragraph (g) of that subsection.

(4) The persons specified in paragraphs (b) and (c) may depute suitable persons as their representatives on the Council.

(5) A member of the Council, other than an *ex officio* member, shall hold office for a period of three years but shall be eligible for re-appointment for one further term of a period not exceeding three years.

(6) The appointment of a member of the Council shall cease if such person-

- (a) not being an *ex officio* member, resigns from office by writing under his hand addressed to the Minister;
- (b) is unable to exercise the functions of his office by reason of physical or mental infirmity;
- (c) is adjudged bankrupt by a court of competent jurisdiction;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (e) conducts himself in a manner inconsistent with membership of the Council;
- (f) is absent from three consecutive meetings without the permission of the Chairman; or
- (g) upon his death.

6. Functions and powers of the Council

(1) Subject to this Act, the governance, control and administration of the Institute shall vest in the Council.

(2) Without prejudice to the generality of subsection (1), the Council shall have power to-

- (a) formulate, with the approval of the Minister, policies pertaining to the organization, management and implementation of the objects of the Institute;
- (b) administer the property and funds of the Institute in such manner and for such purposes as shall best promote the interests of the Institute:
Provided that the Council shall not charge or dispose of the immovable property of the Institute without the approval of the Minister;
- (c) receive, on behalf of the Institute, donations, endorsements, gifts, grants or other monies and to make legitimate disbursements therefrom;
- (d) borrow, generate and raise funds for the purposes of the Institute;
- (e) appoint suitable academic staff for the Institute upon such terms and conditions as it may determine;
- (f) receive reports from the Director or any officer of the Institute in respect of financial and other circumstances of the Institute and to direct any action to be taken by the Director or any officer of the Institute; and

- (h) do or perform anything or any other act for the better carrying out of the purpose of this Act.

(3) There shall be paid to the members of the Council such remuneration, fees or allowances for expenses as the Minister may determine after consultation with the Minister for the time being responsible for finance.

(4) No member of the Council or staff of the Institute shall be personally liable for any act or default, done in good faith in the exercise or purported exercise of the functions of the Council.

7. Academic Board

(1) There shall be an academic board of the Institute which shall consist of-

- (a) the Director;
- (b) the Deputy Directors; and
- (c) the Heads of Departments of the Institute.

(2) The academic board may co-opt such other members as may be necessary for the exercise of its functions under this Act.

(3) The academic board shall-

- (a) set and review the content and academic standard of any diploma or other award of the Institute;
- (b) establish standards for and evaluate the quality of the training programmes of the Institute;
- (c) set examinations and award diplomas and certificates to suitably qualified students of the Institute; and
- (d) co-ordinate such other activities as may be undertaken by the Institute in the discharge of its functions under this Act.

8. Director of the Institute

(1) There shall be a Director of the Institute, who shall be a person with relevant academic and professional qualifications and experience and with proven capacity in training, management and administration of matters related to the water sector and who shall be employed by the Council upon such terms and conditions as the Council may determine.

(2) Except as otherwise expressly provided under this Act, the Director shall, subject to any special or general directions of the Council-

- (a) be the chief executive of the Institute and as such responsible to the Council for the direction, organisation, administration and programmes of the Institute;
- (b) be the chairman of the academic board;
- (c) be responsible for the supervision of the other staff of the Institute, including the maintenance of discipline among the staff and students of the Institute; and
- (d) appoint such temporary professional and other staff as may from time to time be required by the Institute at such fee as may be approved by the Council.

9. Staff of the Institute

The Council may employ such staff as it deems necessary for the efficient discharge of the functions of the Institute, upon such terms and conditions of service as the Council may determine.

PART III —FINANCIAL PROVISIONS**10. Funds of the Institute**

The funds and assets of the Institute shall consist of —

- (a) such monies as may be appropriated by Parliament for the purposes of the Institute;
- (b) any monies or property which may in any manner accrue or vest in the Institute in the course of the exercise of its functions under this Act;
- (c) such monies as may become payable to the Institute by way of fees in respect of services rendered by or through the Institute; and
- (d) all monies from any other sources provided, donated or lent to the Institute.

11. Financial year

The financial year of the Institute shall be the period of twelve months ending on the 30th June in every year.

12. Annual estimates

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

(2) The annual estimates shall make provision for all the estimated expenditure of the institute for the financial year concerned and in particular shall provide for-

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Institute and the members of the Council;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Council;
- (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Institute; and
- (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

(3) The annual estimates shall be approved by the Council at least two months before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval.

(4) No expenditure shall be incurred for the purposes of the Institute except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Council given with prior written approval of the Minister and the Permanent Secretary to the Treasury.

13. Books and records of account

The Council shall cause to be kept proper books and records of account of the income, expenditure and assets of the Institute.

14. Audit

(1) The Council shall within a period of four months after the end of each financial year, submit to the Auditor-General (Corporations) or an auditor appointed in accordance with subsection (2), the books of accounts of the Institute together with-

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the current assets and liabilities of the Institute.

(2) The accounts of the Institute shall be audited and reported upon in accordance with sections 29 and 30A of the Exchequer and Audit Act (Cap. 412), by the Auditor-General (Corporations) or by an auditor appointed by the Institute with the authority of the Auditor-General (Corporations) given in accordance with section 29(2)(b) of the Exchequer and Audit Act (Cap. 412).

PART IV — MISCELLANEOUS PROVISIONS**15. Common seal**

(1) Subject to this section, the common seal of the Institute shall be kept in the custody of the Director or of such other person as the Council may direct, and shall not be used except upon the order of the Council.

(2) The common seal of the Institute shall be authenticated by the signature of the chairman and the Director.

(3) The common seal of the Institute, when affixed to any document and duly authenticated under this section, shall be judicially and officially noticed, and unless the contrary is proved, the necessary order or authorisation of the Council under this section shall be deemed to have been duly given.

16. Signification of documents

All documents other than those required by law to be under seal made on behalf of the Council shall be signified by the hand of the chairman of the Council, the Director, or any other member of the Council specifically authorised by the Council in that behalf.

17. Statutes

(1) In the performance of its functions under this Act, the Council shall make statutes generally for the administration of the Institute, and in particular for-

- (a) the establishment of Departments of the Institute;
- (b) the requirements for the award of diplomas or other awards of the Institute;
- (c) the conduct of examinations;
- (d) prescribing fees, boarding and other charges;
- (e) prescribing the terms and conditions of service, including the appointment, discipline, dismissal and retirement benefits of the officers of the Institute;
- (f) the procedure of meetings of the Council and the establishment, composition and terms of reference of the Committee of the Council.

(2) Statutes shall be made by a resolution made at a meeting of the Council and passed by a majority of the members present and voting.

18. Establishment of facilities

The Institute may establish facilities in any part of Kenya for the better discharge of its functions and responsibilities under this Act.

19. Protection of name

(1) No public officer performing functions relating to registration of companies and business names shall accept for such registration any name which includes the words "Water Institute" together with the word "Kenya" unless the application for the registration is accompanied by the written consent of the Council.

(2) Any person who, except with the written consent of the Council, uses the words "Water Institute" together with the word "Kenya" in furtherance of, or as, or in connection with, any advertisement for any trade, business, calling or profession, commits an offence and is liable on conviction to-

- (a) imprisonment for a term not exceeding twelve months; or
- (b) a fine not exceeding thirty thousand shillings; or
- (c) both such fine and imprisonment:

Provided that nothing in this section shall be construed as preventing the *bona fide* use by any person of any title consequent to the grant to him of a diploma or any other award of the Institute.

PART V —TRANSITIONAL PROVISIONS**20. Interpretation of Part**

In this Part-

"**appointed day**" means the day appointed by the Minister as the commencement date for this Act;

"**former Institute**" means the Institute known as the Kenya Water Institute existing immediately before the commencement of this Act.

21. Assets and liabilities

(1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the former Institute shall, by virtue of this paragraph, vest in the Institute.

(2) On the appointed day, all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the former Institute shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Institute.

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

(4) The annual estimates of the former Institute for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Institute for the remainder of that financial year:

Provided that such estimates may be varied by the Council in such manner as the Minister may approve.

(5) The administrative directions made by the former Institute or by the Minister which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Council or the Minister under this Act.

22. Staff

Any person who is an officer of the former Institute immediately before the appointed day shall be deemed to be on secondment to the Institute:

Provided that such person shall, within a period of one year from the appointed day, exercise his option either-

- (a) to enter into a written contract of service with the Institute, whereupon his service with the Government shall be deemed to have been terminated without right to severance pay but without prejudice to all other remuneration and benefits payable upon such termination; or
 - (b) to be re-deployed by the Government.
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