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LAKE BASIN DEVELOPMENT AUTHORITY ACT

CHAPTER 442

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CHAPTER 442

LAKE BASIN DEVELOPMENT AUTHORITY ACT

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CHAPTER 442**LAKE BASIN DEVELOPMENT AUTHORITY ACT**

[Date of assent: 22nd August, 1979.]

[Date of commencement: 31st August, 1979.]

An Act of Parliament to provide for the establishment of an Authority to plan and co-ordinate the implementation of development projects in the Lake Victoria catchment area and for matters connected therewith and incidental thereto

[Act No. 15 of 1979, Act No. 13 of 1980, Act No. 19 of 1984, Act No. 12 of 1985, Act No. 16 of 1990, Act No. 14 of 1991.]

1. Short title

This Act may be cited as the Lake Basin Development Authority Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Area**” means the Lake Victoria catchment area and that part of Lake Kyoga catchment area situated within Kenya;

“**Authority**” means the Lake Basin Development Authority established by section 3;

“**chairman**” means the person appointed as chairman of the Authority under paragraph (a) of subsection (1) of section 4;

“**non-official members**” means the chairman and the members of the Authority appointed under paragraph (j) of subsection (1) of section 4.

[Act No. 13 of 1980, Sch., Act No. 16 of 1990, s. 2, Act No. 14 of 1991, Sch.]

3. Establishment of the Authority

There is hereby established an Authority which shall be a body corporate by the name of the Lake Basin Development Authority, with perpetual succession and a common seal, and which shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of property, movable or immovable;
- (c) borrowing and lending money;
- (d) entering into contracts;
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. Membership of the Authority

(1) The Authority shall consist of the following members—

- (a) chairman appointed by the President;

- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to the functions of the Authority or an officer of that Ministry designated by the Permanent Secretary in writing;
- (c) the Permanent Secretary of the Ministry for the time being responsible for finance or an officer of that Ministry designated by the Permanent Secretary in writing;
- (d) the Permanent Secretary of the Ministry for the time being responsible for agriculture or an officer of that Ministry designated by the Permanent Secretary in writing;
- (e) the Provincial Commissioner, Nyanza Province;
- (f) the Provincial Commissioner, Western Province;
- (g) the Provincial Commissioner, Rift Valley Province;
- (h) the Director of Water Development;
- (i) the managing director appointed under section 10;
- (j) not more than twelve other members appointed by the Minister, in consultation with the President, nine of whom shall be residents of the area.

(2) Subject to this section, the non-official members shall hold office for a period of three years from the dates of their respective appointments.

(3) A retiring member shall be eligible for reappointment.

(4) If the Minister is satisfied that any of the non-official members—

- (a) has been guilty of improper conduct; or
- (b) is incapacitated by prolonged physical or mental illness; or
- (c) is unable or unfit, for any other reason, to discharge the duties of his office,

and that it would be in the interest of the Authority so to do, he may terminate the appointment of that member.

(5) The office of a non-official member shall become vacant—

- (a) upon the expiry of his term of appointment; or
- (b) upon the termination of his appointment under subsection (4); or
- (c) upon the expiry of one month, or such shorter period as may be mutually agreed, after the date upon which the Minister receives a written notice signed by the member of his intention to resign; or
- (d) if he is absent, without the permission of the Authority, from three consecutive meetings of the Authority of which he had reasonable notice.

(6) The non-official members shall be paid by the Authority such remuneration and allowances as the Minister may from time to time determine.

[Act No. 13 of 1980, Sch., Act No. 19 of 1984, Sch., Act No. 16 of 1990, s. 3.]

5. Meetings and procedure of the Authority

(1) The Authority shall be convened by the chairman at least three times in every year.

(2) The Authority shall elect a vice-chairman from among its members.

(3) The chairman, or in his absence the vice-chairman, may at any time convene a special meeting of the Authority, and shall do so within fourteen days of receipt by him of a written requisition signed by at least three members.

(4) The quorum necessary for the transaction of any business of the Authority shall be ten members inclusive of the person presiding; and all acts, matters or things authorized or required to be done by the Authority shall be effected by a resolution passed by a majority of the members present and voting at a meeting at which a quorum is present.

(5) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Authority; except that in the case of the absence of both the chairman and the vice-chairman the members present shall elect one of their number to preside at that particular meeting.

(6) At every meeting of the Authority the member presiding shall have a casting as well as a deliberative vote.

(7) Subject to subsection (4), no act, decision or proceedings of the Authority shall be questioned on account of any vacancy in the membership thereof or on account of a defect in the appointment of any of its members.

(8) Subject to this Act, and to any general or specific directions of the Minister, the Authority shall regulate its own procedure.

6. Seal and execution of documents

(1) The common seal of the Authority shall be authenticated by the signature of the managing director and such other person as may be generally or specially authorized by the Authority.

(2) All documents other than those required by law to be under seal made by, and all decisions of the Authority may be signified under the hand of the managing director or an officer authorized in that behalf by the Authority.

[Act No. 16 of 1990, s. 4.]

7. Committees

The Authority may from time to time appoint such committees, whether of its own members or otherwise, as it may think necessary but no decision of any committee shall be effective unless it has been confirmed by the Authority.

8. Functions of the Authority

The functions of the Authority shall be—

- (a) to plan for the development of the area and initiate project activities identified from such planning in the area through the Government generally;
- (b) to develop an up-to-date long range development plan for the Area;

- (c) to initiate such studies and carry out such survey as may be considered necessary by the Government or the Authority and to assess alternative demands within the area on the natural resources thereof and to initiate, operate or implement such projects as may be necessary to exploit those natural resources including agriculture (both irrigated and rainfed), forestry, wildlife and tourism industries, electric power generation, mining and fishing, and to recommend economic priorities;
- (d) to co-ordinate the various studies of schemes within the Area such that human, water, animal, land and other resources are utilized to the best advantage and to monitor the design and execution of planned projects within the Area;
- (e) to effect a programme of both monitoring and evaluating the performance of projects within the development area so as to improve such performance and establish responsibility therefor, and to improve future planning;
- (f) to co-ordinate the present abstraction and use of natural resources, especially water, within the Area and to set up an effective monitoring of such abstraction and usage;
- (g) to cause and effect the construction of any works deemed necessary for the protection and utilization of the water and soils of the Area;
- (h) to ensure that landowners in the Area undertake all the measures specified by the Authority to protect the water and soils of the area;
- (i) to identify, collect, collate and correlate all such data related to the use of water and other resources and also economic and related activities within the Area as may be necessary for the efficient forward planning of the Area;
- (j) to maintain a liaison between the Government, the private sector and other interested agencies in the matter of the development of the development area with a view to limiting the duplication of effort and to ensuring the best use of the available technical resources;
- (k) to examine the hydrological and ecological effects of the development programmes and evaluate how they affect the economic activities of the persons dependent on river and lake water development;
- (l) to consider all aspects of the development of the Area and its effects on the lake inflow and outflow; and
- (m) to monitor the operations and provide technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria or of the River Nile.

[Act No. 16 of 1990, s. 5.]

9. Appointment of secretary, etc and remuneration of staff

(1) The Authority shall appoint a secretary to the Authority who shall be responsible for its secretarial services including the recording of its decisions and the communication of those decisions to persons who are required to act on

them and shall perform such other duties as may be assigned by the managing director; and the terms and conditions of service for the secretary shall be determined by the Authority.

(2) The Authority may appoint, upon such terms and conditions as it thinks proper, such other officers and servants as it considers necessary or desirable for the efficient conduct and operation of the Authority.

(3) Every member of staff shall, subject to this Act, exercise such powers and functions and perform the duties assigned to him from time to time by the managing director.

(4) The members of staff appointed under subsection (2) shall be paid out of the funds of the Authority such salaries as the managing director, with the approval of the Authority, may from time to time determine and such travelling and other expenses as they may incur in the performance of their duties.

[Act No. 16 of 1990, s. 6.]

10. Managing Director

(1) There shall be an officer of the Authority to be known as the Managing Director, who shall be appointed by the Minister and who shall be responsible for the execution of policy of the Authority and for the control and management of its day to day business.

(2) The Authority shall delegate to the Managing Director such of its functions under this Act as are necessary for the day-to-day business of the Authority, and in particular the Authority shall delegate to the Managing Director the power, subject to any instructions of a general nature as may be given by the Authority—

- (a) to control and supervise the acts of all officers and servants of the Authority in the matters of executive administration and in all matters concerning the accounts and records of the Authority; and
- (b) to dispose of all questions relating to the service of the officers and servants of the Authority and their pay and privileges; and
- (c) to apply available funds on such items or projects within such limits as may be approved by the Authority.

[Act No. 16 of 1990, s. 7.]

11. Funds of the Authority

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

- (a) such moneys as may from time to time be provided by Parliament;
- (b) moneys borrowed by the Authority on such terms and for such purposes as the Minister, in consultation with the Minister for the time being responsible for finance, may approve; and
- (c) any moneys accruing to the Authority from any other source.

(2) The funds of the Authority shall be invested in such manner as the Authority may deem necessary.

[Act No. 16 of 1990, s. 8.]

12. Accounts and audit

(1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Authority; and shall prepare such other accounts as the Minister may require and, in addition, shall prepare yearly balance sheets made up to the end of each financial year.

(2) At the end of each financial year, the accounts of the Authority shall be audited by the Auditor-General (Corporations).

(3) The Authority shall produce and lay before the Auditor-General (Corporations) all the books and accounts of the Authority with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General (Corporations) shall be entitled to require from all members, officers and servants of the Authority such information and explanations as may be necessary for the proper performance of his duties.

(4) At the completion of an audit under this section, the Auditor-General (Corporations) shall make a report thereon to the Authority and shall at the same time send a copy of the report to the Minister.

[Act No. 12 of 1985, Sch.]

13. Annual reports

(1) The Authority shall within a period of six months after the end of each financial year or within such longer period as the Minister may approve, submit to the Minister a report of its operations and activities during that year, together with the yearly balance sheet and such other statements of accounts as the Minister shall require, and the Authority shall publish the annual report and the yearly balance sheet in such manner as the Minister may specify.

(2) The Minister shall lay both the Authority's report and report of the Auditor-General (Corporations), together with the yearly balance sheet and such other statements of account as the Minister may deem appropriate, before the National Assembly as soon as reasonably practicable.

[Act No. 12 of 1985, Sch.]

14. Protection of members and staff

No act or thing done by any member of the Authority or by any officer or servant of the Authority shall, if the Act or thing was done *bona fide* for the purposes of carrying this Act into effect, subject him personally to any liability, action, claim or demand whatsoever.

14A. Secrecy

(1) No member, officer or servant of the Authority shall disclose any information which he has acquired in the performance of his functions as such member, officer or servant to any person except as so far as may be necessary for the performance of such functions or for due compliance with the order of any court.

(2) Any person, who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding three thousand shillings or to imprisonment for a period not exceeding six months or to both.

[Act No. 16 of 1990, s. 9.]

15. Exemption from stamp duty

No duty shall be chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by or on behalf of or in favour of the Authority in cases where, but for this section, the Authority would be liable to pay such duty.

[Act No. 16 of 1990, s. 9.]

16. Acquisition of land for the purposes of the Authority

(1) Where land is required by the Authority for the purposes of the Authority it may either—

- (a) if the land is not public land, acquire the land through negotiation and agreement with the registered owner thereof; and notwithstanding the provision of section 6 of the Land Control Act (Cap. 302), the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or
- (b) if the land as public land, or if the Authority is unable to acquire it through negotiation and agreement in accordance with paragraph (a), notify the Minister responsible for public Lands that the land specified in the notice is required for the purposes of the Authority.

(2) When notice has been given under subsection (1)(b) then—

- (a) if the land is public land, the Minister responsible for land may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the Authority for the purposes of the Authority;
- (b) if the land is not public land, any provision in any written law which empowers the President or the Minister responsible for land to acquire or direct the acquisition of such land for any specific purposes shall be deemed to include a power enabling the President or the Minister responsible for Lands to acquire or direct the acquisition of such land for the purposes of the Authority.

(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1)(b) acquired by the President or the Minister responsible for Lands and such land after being so acquired is placed at the disposal of the Authority in accordance with subsection (2)(a), the amount of the compensation payable to that person, in accordance with the provisions of the Law under which the Land was acquired, shall be paid by the Authority.

(4) The Authority may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without consideration:

Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Minister responsible for Lands consents and so directs.

(5) In this section—

“public land” means all public land in Kenya, excluding trust land, which is vested in the Government for public purposes or for the purposes of the Authority or its predecessors in title and for the purposes of the proviso to subsection (4) includes land previously so vested;

“trust land” means land which is or which has previously been vested in a county council by virtue of section 115 of the Constitution.

[Act No. 16 of 1990, s. 10.]
