

(Legislative Supplement No. 18)

LEGAL NOTICE NO. 35

THE STATE CORPORATIONS ACT

(Cap. 446)

IN EXERCISE of the powers conferred by section 3(1) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, make the following Order—

THE KENYA MEDICAL RESEARCH INSTITUTE ORDER, 2021

PART I—PRELIMINARY

1. This order may be cited as the Kenya Medical Research Institute Order, 2021. Citation.

2. In this order, unless the context otherwise requires— Interpretation.

“biomedical research” means—

- (a) research in the biomedical sciences relevant to human and animal health; and
- (b) research into the causes, effects, diagnosis, treatment, prevention, and control of human health related conditions;

“Board” means the Board of Directors of the Kenya Medical Research Institute constituted in accordance with paragraph 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;

“Director-General” means the person appointed as such in accordance with the provisions of paragraph 11;

“health research” means research that seeks to understand the impact on health, policies, programmes, processes, actions or events originating in any sector and which—

- (a) contributes to knowledge of the biological, clinical, psychological or social processes in human beings or animals;
- (b) uses scientific methods to generate information to deal with health and disease;
- (c) improves scientific methods for provision of health services and human pathology;
- (d) investigates causes of disease and the effects of the environment on the human body; and
- (e) develops new applications of pharmaceuticals and diagnostics, health technology and products;

“incubation centre” means a designated location for nurturing or mentoring scientists to move basic research to product development;

“intellectual property rights” means exclusive rights granted to inventors and owners of works that are the result of human intellectual creativity;

“public health research” means research into factors that influence the health of a population, and includes—

- (a) research into health systems and health services;
- (b) research into the environmental, socio-economic, cultural, and behavioural factors that determine health status; and
- (c) research on any other factors related to public health; and

“research” means a systematic investigation, experimentation, testing, exploration, analysis, fact-finding, examination, scrutiny, and evaluation, designed to develop or contribute to generalizable knowledge, for decision making, policy-development and practice.

PART II—ESTABLISHMENT OF THE KENYA MEDICAL RESEARCH INSTITUTE

3. (1) There is established an institute to be known as the Kenya Medical Research Institute (hereinafter referred to as the “Institute”) which shall be a research institute within the meaning of section 16(2) and section 53 as read with the Fourth Schedule of the Science, Technology and Innovation Act, 2013.

Establishment of the Institute.

No. 28 of 2013.

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

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

4. The objective of the Institute shall be to carry out health research, innovation, capacity-building and service delivery for the improvement of human health and quality of life, and advice the Government on matters related thereto.

Objective of the Institute.

5. The Institute shall—

- (a) conduct health, biomedical and public health research for human health;
- (b) build human health research capacity;
- (c) collaborate and partner with other local and international research bodies and institutions in carrying out human health research and capacity building;

Functions of the Institute.

- (d) advice the responsible Ministry in matters pertaining to health research policies and priorities;
- (e) undertake scientific and technological innovation as well as in the discovery, transmission and enhancement of knowledge and stimulate the intellectual life in the economic, social, cultural, scientific, and technological development;
- (f) establish incubation centres for innovation, and link research, policymakers, academia and industry in the health products value chain; and
- (g) to do all such things that are necessary or desirable to carry out its functions.

PART III—BOARD OF DIRECTORS OF THE INSTITUTE

6. (1) There shall be a Board of Directors of the Institute which shall consist of—

Board of the Institute.

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for finance, or his or her representative, appointed in writing;
- (c) the Principal Secretary in the Ministry for the time being responsible for health, or his or her representative, appointed in writing;
- (d) the Attorney-General or his representative, appointed in writing;
- (e) four other members, not being public officers, appointed by the Cabinet Secretary; and
- (f) the Director-General who shall be an *ex-officio* member of the Board.

(2) The persons to be appointed under subsection (1)(a) and (e) shall be selected through conventional board resourcing procedures including through applications, referrals and knowledge of the market and industry actors.

(3) The appointments under subparagraphs (1)(a) and (e) shall be by notice in the *Gazette*.

(4) The Board may co-opt any other person with necessary expertise and on temporary basis as it considers necessary to assist the Board in discharging its duties and responsibilities.

7. A person shall be eligible to be appointed as the Chairperson or a member of the Board if that person—

Qualification for appointment to the Board.

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has proven professional knowledge and experience in matters relating to research, finance or audit, medicine, business management, economics, or law;

- (c) has served in a senior management position for a period of at least six years;
- (d) has not served in the same entity as an employee in the preceding five years; and
- (e) meets the requirements of Chapter Six of the Constitution.

8. (1) The tenure of office for the Chairperson and members of the Board appointed under paragraph 6(1)(e) shall be for a term of three years which may be renewed only once for a further term of three years.

Tenure and
vacation of office.

(2) The office of the Chairperson or member of the Board shall become vacant if the holder—

- (a) by a notice, in writing, addressed to the appointing authority, resigns from office;
- (b) is removed from office, by the appointing authority, on grounds of incapacity due to mental or physical illness or is otherwise unable to discharge the functions of a member of the Board or continue to serve in the Board;
- (c) is absent from three consecutive meetings of the Board without good cause and prior apology;
- (d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (e) is sentenced by a court to imprisonment for a term of six months or more; or
- (f) is convicted of an offence involving dishonesty or fraud.

9. (1) The Board shall be responsible for the management and administration of the Institute.

Functions of the
Board.

(2) Without prejudice to the generality of subparagraph (1), the Board shall—

- (a) manage, supervise and administer the assets of the Institute in such a manner as best promotes the purpose for which the Institute is established;
- (b) determine the provisions to be made for capital, and recurrent expenditure and for reserves of the Institute;
- (c) establish operational and administrative units for the effective functioning of the Institute;
- (d) recruit the Director-General for the Institute and other staff on such terms and conditions as may be approved by the relevant government organs;
- (e) receive any grants, gifts, donations or endowments on behalf of the Institute and make legitimate disbursements therefrom;

- (f) enter into association with such other bodies or organizations locally and internationally as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Institute is established;
- (g) open a banking account or bank accounts for the funds of the Institute; and
- (h) perform any other function that enhances or adds value to the proper performance of the functions of the Institute.

10. (1) The Institute shall have power to do all things that may lawfully be done by a body corporate and may—

Powers of the Board.

- (a) create, develop, apply for and hold intellectual property rights and enter into agreements or arrangements for their commercial exploitation or otherwise as the Board may consider appropriate;
- (b) enter into partnerships and collaborations with bodies and institutions locally or internationally;
- (c) obtain and maintain experimental laboratory animals for research purposes; and
- (d) to do all things that are necessary or desirable to carry out its functions.

(2) Without prejudice to the generality of subparagraph (1), the Board shall have the power to—

- (a) open a bank account for the funds of the Institute into which all moneys received by the Institute shall be paid in the first instance and out of which all payments made by the Institute shall be made;
- (b) enter into any agreement or partnership with any public sector agencies and other parties for the operation of facilities, equipment or services of the Institute as necessary, in furtherance of the discharge of the functions of the Institute;
- (c) acquire such land or assets for the proper performance of the functions of the Institute;
- (d) invest any of the Institute's funds not immediately required for performance of the objects and purposes for which the Institute is established in accordance with the provisions of paragraph 19; and
- (e) with the written prior approval of the Cabinet Secretary, carry out any other activity that in the opinion of the Board will promote and facilitate the realization of the objects and purposes for which the Institute is established.

11. The Board may by resolution, in writing, either generally or for a particular case, delegate to any committee of the Board or Institute management, the exercise of any of the powers or the performance of

Delegation by the Board.

any of the functions of the Board under this Order or any other written law.

12. (1) There shall be a Director-General who shall be the Chief Executive Officer of the Institute appointed by the Board on such terms and conditions of service as the Cabinet Secretary may, in consultation with relevant government organs, approve.

Director-General.

(2) A person shall qualify for appointment as the Director-General if that person—

- (a) has a degree in a health related field, finance or audit, business management, economics, law or any other relevant field;
- (b) has had a distinguished career in a senior management position in either the private or public sector for at least ten years; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be responsible—

- (a) for the day to day operations of the Institute;
- (b) for supervision, management and discipline of the staff of the Institute;
- (c) for executing the policies of the Board in respect of the mandate of the Institute;
- (d) for reporting to the Board on the performance of the Institute; and
- (e) for performing any other functions as may be assigned to him or her by the Board from time to time.

(4) The Director-General shall hold office for a term of three (3) years but shall be eligible for re-appointment for one further term of three (3) years.

13. (1) There shall be a Corporation Secretary to the Institute who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary (CPS) and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has previously held the position of corporation secretary or in a similar governance role for a period of at least five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be the Secretary to the Board and shall be responsible—

- (a) for providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Institute;
- (b) for ensuring that Board procedures are followed and reviewed regularly, and that the Board complies with the law, rules and regulations;
- (c) for assisting the Chairperson in organising Board activities, including providing information, preparing agenda, issuing notices and preparing for meetings, Board evaluations and Board development programmes;
- (d) for providing secretarial services to the Board, including ensuring that the Board work plan is prepared and adhered to, circulating Board papers in advance of the meeting, keeping the record of attendance of the meetings and preparing the Board for annual general meeting, where applicable;
- (e) for ensuring that the minutes of the Board and Board committees are promptly prepared and circulated;
- (f) for keeping the Board abreast of and informed on, current governance thinking and practise;
- (g) for keeping a record of conflicts of interest declared by each member of the Board; and
- (h) for co-ordinating the governance audit process.

14. (1) The Board may appoint such number of professional, technical and administrative staff for the Institute as it may consider necessary.

Staff of the Institute.

(2) The staff appointed under subparagraph (1) shall serve on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

15. The Board may make policies for the carrying into effect the provisions of this Order, and in particular, but without prejudice to the foregoing, make policies—

Policies.

- (a) with respect to the procedure for the appointment of all members of staff or officers of the Institute;
- (b) with respect to the performance parameters and targets for any department, section, officer or member of staff of the Institute;
- (c) with respect to fees and charges to be levied by the Institute with respect to its services; and
- (d) outlining the Service Charter and deliverables of the Institute.

PART IV—FINANCIAL PROVISIONS

16. The funds of the Institute shall consist of—

Funds of the Institute.

- (a) monies appropriated by Parliament for the purposes of the Institute;
- (b) such monies or assets as may accrue to the Institute in the course of the exercise of its powers or in the performance of its functions under this Order;
- (c) monies from any other source provided, donated, lent or given as a grant to the Institute; and
- (d) any other funds designated for or accruing to the Institute by virtue of the operation of law.

17. The financial year of the Institute shall be the period of twelve months ending on the thirtieth day of June in each year. Financial year

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

(2) The annual estimates shall make provision for 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;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Institute;
- (c) the proper maintenance of the buildings and grounds of the Institute;
- (d) the proper maintenance, repair and replacement of the equipment and other movable property of the Institute; and
- (e) the creation of 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 matters as the Institute may deem fit.

(3) The annual estimates shall be approved in accordance with the provisions of Public Finance Management Act, 2012 before the commencement of the financial year to which they relate, and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Cabinet Secretary. No. 18 of 2012.

(4) No expenditure shall be incurred for the purposes of the Institute except in accordance with the annual estimates approved under this paragraph.

19. (1) The Institute may invest any of its funds which are not immediately required for its purposes in such securities as the National Treasury may, from time to time, approve. Investment of surplus funds.

(2) The Institute may place on deposit with such bank or banks which are licensed to operate in Kenya by the Central Bank of Kenya any monies not immediately required for its purposes.

20. The Institute shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Board. Books of accounts.
21. (1) The accounts of the Institute shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General. Accounts and audit.
- (2) Within a period of three months after the end of each financial year, the Institute shall submit to the Auditor-General or to an auditor appointed under subparagraph (1) the accounts of the Institute together with—
- (a) a statement of income and expenditure of the Institute during that year; and
 - (b) a statement of the assets and liabilities of the Institute on the last day of the financial year.
- (2) The accounts of the Institute shall be audited in accordance with the provisions of the Public Audit Act, 2015. No. 34 of 2015.
22. (1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Institute. Accounts and audit.
- (2) The accounts of the Institute shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015. No. 34 of 2015.
- (3) The appointment of an auditor under subparagraph (1) shall not be terminated without the prior written consent of the Auditor-General.
- (4) The Auditor-General may give general or special directions to an auditor appointed under subparagraph (1) and the auditor shall comply with those directions.
- (5) An auditor appointed under subparagraph (1) shall report directly to the Auditor-General on any matter relating to the directions given by the Auditor-General.
- (6) Within six months after the end of each financial year, the Auditor-General shall report on the examination and audit of the accounts to the Institute to the Cabinet Secretary and, in the case of an auditor appointed under subparagraph (1), the auditor shall transmit a copy of the report to the Auditor-General.
- (7) Nothing in this Order shall be construed to prohibit the Auditor-General from carrying out an inspection of the Institute's accounts or records whenever it appears desirable and the Auditor-General shall carry out such an inspection at least once every six months.
- (8) The Cabinet Secretary shall lay the report prepared under subparagraph (6) before the National Assembly as soon as reasonably practicable after the report has been submitted to him or her.

PART V—TRANSITIONAL, SAVINGS AND GENERAL PROVISIONS

23. (1) For avoidance of doubt, a person who immediately before the commencement date of this Order holds or is acting or is an employee or staff of the Kenya Medical Research Institute referred to under the Fourth Schedule to the Science, Technology and Innovation Act shall be deemed to hold the same office or its equivalent under the Institute on the terms and conditions as may be determined by the Board.

Transitional and saving provisions.

(2) Any contract, project, memorandum of understanding or any other binding instrument entered into by the Kenya Medical Research Institute referred to under the Fourth Schedule to the Science, Technology and Innovation Act before the commencement of this Order shall continue to hold and be implemented by the Institute.

24. No matter or thing done by the Board, Chairperson, any member of the Board, or any officer, employee or agent of the Institute shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, Board member, or any officer, employee or agent of the Institute or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.

Protection from personal liability.

25. The provisions of this Order shall not relieve the Institute of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any works

Liability for damages.

Made on the 1st March, 2021.

UHURU KENYATTA,
President.