



LAWS OF KENYA

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## **IRRIGATION ACT**

CHAPTER 347

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**CHAPTER 347**

**IRRIGATION ACT**

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**CHAPTER 347**  
**IRRIGATION ACT**

[Date of assent: 11th March, 1966.]

[Date of commencement: 24th June, 1966.]

**An Act of Parliament to provide for the development, control and improvement of irrigation schemes, and for purposes incidental thereto and connected therewith**

[Act No. 13 of 1966, L.N. 243/1976, Act No. 6 of 1979, Act No. 13 of 1988, Act No. 5 of 2007, Act No. 16 of 2013, L.N 57/2013.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Irrigation Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**agriculture**” and “**agricultural produce**” have the meanings assigned to those expressions in the Agriculture Act (Cap. 318);

“**Board**” means the National Irrigation Board established by section 3;

“**national irrigation scheme**” means an area of land designated as a national irrigation scheme under section 14.

[Act No. 6 of 1979, Sch.]

**PART II – ESTABLISHMENT AND INCORPORATION OF BOARD**

**3. Establishment and incorporation of Board**

(1) There is hereby established a Board, to be known as the National Irrigation Board, which shall be a body corporate having perpetual succession and a common seal, with power to sue and be sued, and capable of purchasing or otherwise acquiring, holding, managing and disposing of any property movable or immovable, entering into contracts, and doing all things necessary for the proper performance of its duties, and discharge of its functions under this Act and any subsidiary legislation made thereunder.

(2) The provisions of the Schedule shall have effect as to the constitution, membership, proceedings of and otherwise in relation to the Board.

(3) The Minister may, subject to this Act and on the advice of the Board, by order amend the Schedule.

**4. Authentication of seal and proof of documents**

(1) The affixing of the seal of the Board shall be authenticated by the signature of the chairman, the vice-chairman or one member of the Board duly authorized by the Board in that behalf, and the signature of the secretary to the Board.

(2) Any document, other than one required by law to be under seal, made by and any decision of, the Board may be signified under the hand of the chairman, or the vice-chairman, or any member of the Board authorized by the Board in that behalf, or the secretary to the Board.

(3) Any document purporting to be a document duly executed or issued or signified under the seal of the Board, or on behalf of the Board in accordance with this section, shall be received in evidence, and shall be deemed to be a document so executed or issued or signified, as the case may be, without further proof, unless the contrary is shown.

#### **5. Meetings of Board**

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

(2) The chairman may at any time convene a special meeting of the Board, and shall do so within one month of the receipt by him of a written requisition signed by at least three members.

(3) At every meeting of the Board, the member presiding shall have a casting as well as a deliberative vote.

(4) The quorum of the Board shall be eight.

(5) Subject to subsection (4), no act, decision or proceeding of the Board shall be questioned on account of any vacancy in the membership thereof or on account of any defect or failure in the appointment of any of its members.

#### **6. Appointment of secretary and other officers and staff**

(1) The Board may appoint and employ a secretary and such other officers and servants as may be necessary or desirable for the efficient conduct and operation of the Board.

(2) The Board may establish and make contributions to a pension, superannuation, provident or medical fund or other contributory scheme for its officers and servants, and may grant pensions, gratuities, retiring allowances or sickness or injury benefits to any officers and servants, and may require such officers and servants to contribute to any pension, superannuation, provident or medical fund or contributory scheme.

#### **7. Appointment and powers of agents**

The Board may from time to time appoint and employ upon such terms and conditions as it thinks fit any persons or bodies of persons, corporate or unincorporated, to be its agents for the purposes of this Act, and every such agent shall, subject to such limitations as the Board may in each case impose, exercise on behalf of the Board all the powers conferred by this Act or by any subsidiary legislation made thereunder on the Board.

#### **8. Committees of Board**

The Board may from time to time appoint committees, whether of its own members or otherwise, to carry out such general or special functions as may be specified by the Board.

**9. Delegation of powers**

The Board may, by resolution, delegate to any committee, member, officer, servant or agent of the Board the exercise of the powers or the performance of any of the functions or duties which the Board is authorized or required by this Act to exercise or perform, either generally or in any particular case.

**10. Remuneration and expenses**

(1) The members of the Board (other than public officers in receipt of a salary as such) shall be paid out of the funds of the Board such remuneration as the Board, with the approval of the Minister, shall determine.

(2) The officers, servants and agents of the Board shall be paid out of the funds of the Board such remuneration as the Board may from time to time determine.

(3) The Board may, in its discretion, refund such travelling and other expenses as may reasonably have been incurred by its members, officers, servants and agents in the performance of their duties under this Act.

**11. General Manager**

(1) There shall be an officer of the Board, to be known as the General Manager, who shall be appointed by the Board, subject to the approval of the Minister, and who shall be responsible for the execution of the policy of the Board and for the control and management of its day to day business.

(2) The Board shall delegate to the General Manager such of its functions under this Act as are necessary to transact effectively the day-to-day business of the Board of any kind whatsoever, and in particular, and without prejudice to the generality of the foregoing, the Board shall delegate to the General Manager the power, subject to any instructions of a general nature as may be given by the Board

- (a) to control and supervise the acts of all officers, servants and agents of the Board in the matters of executive administration in the whole field of irrigation and in all matters concerning the accounts and records of the Board; and
- (b) to dispose of all questions relating to the service of officers, servants and agents of the Board and their pay, privileges and allowances.

**12. Declaration of interest**

Every member of the Board who is or is likely to be concerned in, or who participates or is likely to participate in the profits of, any contract with or work done for the Board otherwise than in his capacity as a member of the Board shall, on the matter coming before the Board for consideration, immediately declare his interest therein, and shall, unless the Board otherwise agrees, retire from the meeting, and shall in any case abstain from voting on the matter.

**PART III – FUNCTION AND POWERS OF BOARD****13. Directions of Minister**

In the exercise of its powers and the performance of its functions under this Act, the Board shall act in accordance with any general or special directions that may be given to it by the Minister.

**14. Designation of the national irrigation schemes and vesting of land**

(1) The Minister may, by notice in the *Gazette*, designate any area of land to be a national irrigation scheme.

(2) In respect of land, other than Trust land, in a national irrigation scheme, the Minister shall, in accordance with the law for the time being relating to the compulsory acquisition of land, take such steps as may be necessary to acquire the right, title or interest in such land and to vest it in the Board for the purposes of this Act.

(3) In the case of Trust land forming part of a national irrigation scheme, the Minister, on behalf of the Board, may take the land on lease, on terms to be agreed between the Minister and the county council concerned.

(4) In default of agreement between the Minister and the county council as to the terms of a lease under subsection (3) of this section, the provisions of section 118 of the Constitution of Kenya shall have effect.

**15. Functions and powers of Board**

(1) The Board shall be responsible for the development, control and improvement of national irrigation schemes in Kenya.

(2) The Board shall have and may exercise all such powers as are necessary to enable it to perform its functions under this Act, and, without prejudice to the generality of the foregoing, the Board shall have power—

- (a) to conduct research and investigation into the establishment of national irrigation schemes;
- (b) in conjunction with the Water Resources Authority established under the Water Act (Cap. 372), to formulate, and be responsible for the execution of, policy in relation to national irrigation schemes;
- (c) in consultation with the Minister and the Minister for the time being responsible for finance, to raise funds for the development of national irrigation schemes;
- (d) to co-ordinate and plan settlement on national irrigation schemes;
- (e) to design, construct, supervise and administer national irrigation schemes;
- (f) to determine the number of settlers to be accommodated in a national irrigation scheme;
- (g) to provide land in national irrigation schemes for public purposes;
- (h) to promote the marketing of crops and produce grown or produced on national irrigation schemes and to liaise with organizations responsible for the marketing of agricultural produce;
- (i) to provide, either by itself or by agreement with other persons, for the processing of agricultural produce grown or produced on national irrigation schemes;
- (j) to award scholarships and bursaries for the study of irrigation (both in Kenya and elsewhere) or any other subject which the Board considers to be of benefit to the Board.

## PART IV – FINANCIAL PROVISIONS

**16.** *Repealed by No. 5 of 2007, s. 18.*

**17. Establishment and operation of general fund and other funds, and investment of funds**

(1) The Board shall, with the approval of the Minister, establish a general fund—

- (a) into which all moneys received by the Board shall in the first instance be paid; and
- (b) out of which all payments made by the Board shall be paid.

(2) The Board may, with the approval of the Minister, establish such other funds as it may deem necessary.

(3) The Board may, with the approval of the Minister, open a banking account or banking accounts to handle such funds as the Board may establish, and may, subject to such conditions as the Minister may impose, invest such of its funds as are not for the time being required for the purposes of its duties and functions under this Act.

(4) The powers of the Minister under subsection (3) shall be exercised with the concurrence of the Minister for the time being responsible for Finance and shall, in relation to investments, extend to the amount which may be invested, the nature of the investment and the terms and conditions thereof, and the Minister's approval may be either general or limited to a particular investment.

**18. Board's powers with regard to receipt of moneys**

The Board is hereby empowered to receive and apply—

- (a) all funds which may from time to time be provided by Parliament for the purposes of the Board; and
- (b) revenue accruing from any cess imposed under section 16; and
- (c) loans raised under section 19; and
- (d) any moneys properly accruing to the Board from any other source.

**19. Borrowing powers of Board**

(1) The Board may, with the approval of the Minister and the Minister for the time being responsible for finance, borrow by way of overdraft or otherwise such sums as it may from time to time require, for all or any of the following purposes—

- (a) the provision of working capital;
- (b) the establishment or acquisition of property or undertakings required by the Board for the purposes of this Act;
- (c) any other expenditure properly incurred by the Board for the purposes of this Act.



(2) The Board may also obtain by way of advance from the Treasury, and the Treasury may, out of moneys provided by Parliament, advance to the Board, moneys for all or any of the purposes referred to in subsection (1).

(3) The Board shall pay interest on advances under subsection (2) at such rates as the Treasury may fix, and the money so advanced and from time to time outstanding, together with the interest thereon, shall, unless the Treasury otherwise agrees, be a first charge on the property, assets, revenues and funds of the Board or of such part thereof as shall be hypothecated to secure such advance, but not upon the property, assets and funds of any pension, superannuation provident or medical fund, or other contributory scheme created in favour of the officers or servants of the Board.

## **20. Special application of revenues**

(1) The Board shall make proper provision for the renewal of wasting assets, for payments of interest and sinking fund charges where appropriate, and for contributions to such reserve and stabilization funds as may be required.

(2) Any excess of the revenues of the Board for any financial year over the total sums (including sums provided under subsection (1)) properly chargeable by the Board against its revenues for that year shall be applied by the Board in such manner as the Minister, after consultation with the Board, may direct.

## **21. Accounts**

The Board shall cause to be kept proper books of account, records and vouchers in relation to all its undertakings, funds, activities and property and shall cause to be prepared in respect of each financial year—

- (a) trading and profit and loss accounts;
- (b) a balance sheet; and
- (c) such other accounts as the Minister may require.

## **22. Audit**

(1) The accounts of the Board shall be examined, audited and reported upon annually by the Auditor-General (Corporations).

(2) The Board shall produce and lay before the auditors all books and accounts of the Board, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditors shall be entitled to require from all members, officers, agents or servants of the Board such information and explanation as may be necessary for the performance of their duties as auditors.

(3) The expenses of and incidental to the audit shall be paid by the Board.

[Act No. 13 of 1988, Sch.]

## **23. Annual report**

(1) The Board shall, within a period of seven months after the end of each financial year, or within such longer period as the Minister may approve, submit to the Minister a report on its operations during that year, and the auditor's report, together with the yearly balance sheet and such other statements of account as the Minister shall require; and the Board shall publish them in such manner as the Minister may specify.

(2) A copy of every auditor's report, balance sheet and other statements of accounts submitted in accordance with subsection (1) shall be sent by the Board to the Controller and Auditor-General, who may at any time examine the accounts of the Board, and shall be entitled to require from the Board and the auditors such further information and explanation as he may consider necessary.

(3) The Board's report, with the yearly balance sheet and such other statements of account as the Minister may deem appropriate, together with the auditor's report and any report made by the Controller and Auditor-General, shall be laid by the Minister before the National Assembly as soon as possible after it has been submitted to him.

## PART V – GENERAL

### **24. Board to appoint advisory committees**

(1) The Board shall appoint an advisory committee in respect of each national irrigation scheme.

(2) The Board shall, with the approval of the Minister, regulate the membership, powers and duties of the advisory committees appointed under subsection (1).

### **25. Protection of Board, etc., from liability**

No liability shall attach to the Board or its members, officers, agents or servants for any loss or damage sustained by any person as a result of any act or omission done or omitted to be done in good faith and without negligence in the performance or exercise of any duty or power imposed or conferred by or under this Act.

### **26. Appeals**

Any person aggrieved by the revocation by the Board of the appointment of an agent for any purpose under this Act, and who has had his representations thereon rejected in writing by the Board, may within twenty-eight days of such rejection being communicated to him appeal to the Agricultural Appeals Tribunal established under Part XV of the Agriculture Act (Cap. 318), and the provisions of that Part (excepting section 195(2) thereof) shall apply *mutatis mutandis* in relation to every such appeal.

### **27. Regulations**

(1) The Minister may, after consultation with the Board, make regulations generally for the better carrying out of the purposes and provisions of this Act, and without prejudice to the foregoing generality those regulations may provide for—

- (a) the administration and day to day control of national irrigation schemes;

- (b) the standards of good husbandry and the control of pests and diseases in national irrigation schemes;
- (c) the regulation of, and the rates payable for, the use of water on national irrigation schemes;
- (d) *deleted by No. 5 of 2007, s. 19;*
- (e) the methods of harvesting, collection, storage, transport, processing, marketing and sale of produce grown on national irrigation schemes;
- (f) the licensing of contractors to perform any function connected with a national irrigation scheme.

(2) Any regulations made under this section may require acts to be performed to the satisfaction of a prescribed authority, may prohibit their performance without the prior approval of a specified authority, and may empower a specified authority to impose conditions.

(3) Any regulations made under this section may be made to apply generally to all national irrigation schemes or to any specified national irrigation scheme or to any specified area or areas thereof.

(4) Any regulations made under this section may provide for such penalty for the breach of any provision thereof, not exceeding a fine of ten thousand shillings and imprisonment for one year, as the Minister may think fit.

[Act No. 5 of 2007, s. 19.]

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## SCHEDULE

[Section 3, L.N. 243/1976.]

### CONSTITUTION OF BOARD AND OTHER MATTERS RELATING TO BOARD

#### 1. The Board shall consist of the following members—

- (a) a chairman who shall be appointed by the Minister;
- (b) the Director of Agriculture or a person deputed by him in writing to exercise his functions on the Board;
- (c) one representative from each province in which a national irrigation scheme exists, or is being planned, appointed by the Minister from a panel of not less than three persons associated with irrigation submitted to him by each Provincial Agricultural Board concerned:

Provided that, should a province have no Provincial Agricultural Board, the Minister shall appoint a representative for such province after consultation with persons representing irrigation interests in that province;

- (d) the Director of Water Development or any person deputed by him in writing to exercise his functions on the Board;
- (e) the chairman of the Water Resources Authority established under the Water Act (Cap. 372), or any person deputed by him in writing to exercise his functions on the Board;
- (f) the Permanent Secretary to the Treasury or any person deputed by him in writing to exercise his functions on the Board;
- (g) the Permanent Secretary for Agriculture or any person deputed by him in writing to exercise his functions on the Board;
- (h) not more than three persons appointed by the Minister, who, in his opinion, have qualities of benefit to the Board;
- (i) the Permanent Secretary for Health or any other person deputed by him in writing to exercise his functions on the Board.

**2.** The Board shall elect a vice-chairman annually from among its members.

**3.** In the absence of the chairman and the vice-chairman from any meeting of the Board the members present shall elect one of their number to preside, and such member shall, for the purposes of that meeting, have all the powers and attributes of the chairman.

**4.** All appointments to the Board and all changes of such appointments shall be notified in the Gazette.

**5.** The members of the Board appointed under paragraph 1(h) shall hold the office at the pleasure of the Minister.

**6.** The chairman shall retire at the end of the third year after appointment but shall be eligible for re-appointment.

**7.** Two members appointed under paragraph 1(c) shall retire annually but shall be eligible for re-appointment.

**8.** The members to retire under paragraph 7 shall be those members who have been continuously longest in office (re-appointments being deemed for this purpose to break continuity of office), and as between members who have been continuously in office for an equal period shall, in default of agreement, be determined by the Board by ballot.

**9.** Notwithstanding the provisions of paragraphs 5, 6, 7 and 8, the office of a member of the Board shall, upon declaration by the Minister, become vacant—

- (a) if he resigns his office by writing under his hand addressed to the Minister;
- (b) on his death;
- (c) if he is certified to be insane or otherwise adjudged to be of unsound mind under any written law;
- (d) if in the judgment of the Minister he becomes physically or otherwise incapable of discharging his duties as a member, and remains so for a period of forty consecutive days;

- (e) if he is absent, without the permission of the Board, from three consecutive meetings of the Board;
- (f) if he is adjudged or otherwise declared bankrupt under any written law;
- (g) if he is sentenced by a court to a term of or exceeding six months imprisonment.

**10.** Any declaration by the Minister under paragraph 9 shall be conclusive, and shall not be questioned in any court.

**11.** On any office becoming vacant under this Schedule, the Minister may by notice in the *Gazette*, and, in the case of a vacancy under paragraph 1(c), after submission of a panel of persons as provided therein, appoint another member to fill the vacancy, and, except in the case of a vacancy arising under paragraph 9, may in so doing reappoint the member vacating.

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