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THE WATER ACT, 2009

(No. 8. of 2002)

THE WATER (SERVICES REGULATORY) RULES, 2012

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THE WATER ACT

(No. 8 of 2002)

IN EXERCISE of the powers conferred by section 110 of the Water Act, 2002, the Minister for Water makes the following Rules:—

THE WATER (SERVICES REGULATORY) RULES, 2012

PART I-PRELIMINARY

1. These Rules may be cited as the Water (Services Regulatory) Rules, 2012. Citation.

2. In these Rules, except where the context otherwise requires – Interpretation.

“Act” means the Water Act 2002;

“agent” means a water service provider contracted as such through a service provision agreement by a water services board to provide water services;

“communal water services work” means a customer connection through which water services are supplied to more than ten households;

“controlled volume” means that the supply of water to customer is intentionally restricted or limited to a predetermine maximum volume for a measurement period;

“cure notice” means a notice issued by the Regulatory Board, licensee or agent to correct or repair a breach, irregularity or illegality;

“customer” means a person or persons who is or are the buyer or recipient and end user of water services;

“designated person” means any person appointed or designated by the Regulatory Board for a particular purpose under the Act or these Rules;

“director” means the Director of Water Services;

“directorate” means the Directorate of Water Services;

“effective date” means the date that these rules come into force;

“fixed charge” means a monthly charge levied irrespective of the actual volume of water supplied or amount of effluent discharged or disposed of;

“issuing officer” means an officer authorised to issue a license, permit or other authorization under these Rules;

“licensed water service engineer” means a person holding a water service installation licence, and any reference in these Rules to a water service engineer is deemed to be reference to a licensed water service engineer;

“licensee” means a Water Service Board duly established and licensed under the Water Act 2002;

“limits of water supply” means the limits, delineations or geographical extents in which a licensee or agent may supply water services;

“Minister” means the Minister for Water and Irrigation;

“Ministry” means the Ministry of Water and Irrigation;

“price cap” means a methodology where the price charge for a service is allowed to change by the rate of inflation over the initial price with an adjustment factor (X) based on factors such as technological changes, need to finance development infrastructure and need to adopt efficient working systems;

“supply of water in bulk” means supply of water by a licensee or a private undertaker to an agent or other licensees for purposes of resale or distribution to customers;

“supply zone” means an area, determined by a licensee, within which all the customer connections are provided with water supply services from the same bulk water supply;

“uncontrolled volume” means that the supply of water services to a customer is not intentionally restricted or limited to any maximum volume;

“variation” means any authorized amendment made to a valid licence issued under these Rules;

“volume based charge” means a charge levied proportionately to the amount of water supplied or effluent discharged or disposed of;

“water service contractor” means any person holding a water service installation licence issued under these Rules to carry out any water service installation work either individually or as a body corporate or incorporate for voluntary, business, training or teaching purposes in the field either for gain or reward, or at no charge at all;

“water service installation” means the pipes, machinery, apparatus, appliances, devices, material and equipment used or intended for use by a customer for receipt, distribution or use of water supply, consumption or sewerage disposal;

“water service installation licence” means any document or instrument in writing granted under these Rules to any person authorizing the carrying out of water service installation work;

“water service installation work” means the installation, alteration, or repair, wholly or partially, of a water service installation, but excludes work upon the system of a public water service supplier or other licensee carried out by such public water service supplier or servant of such public water service supplier acting on his behalf;

“Water service provider” as used in these Rules means agent and *vice versa* and has the same meaning as in the Act;

“water services board” as used in these Rules means “licensee” and *vice versa* and has the same meaning as in the Act;

“water services infrastructure and facilities” means networks, facilities, equipment, applications and assets for water production, transmission, distribution and waste water disposal facilities, and in these Rules the terms are used inter changeably;

“water service inspector” means any water service inspector appointed in accordance with rule 64;

“water system operator” means a person running a water service system such a dam, well, borehole, tanker, reservoir and connected systems.

3. These Rules shall apply to-

Application.

- (a) the Regulatory Board;
- (b) all licensees in Kenya or their contracted agents or associates;
- (c) all water service operators.

PART II-APPLICATION FOR LICENCE

4. (1) Each water service board shall apply to the Regulatory Board for the issuance of a license.

Application to the Regulatory Board.

(2) A license application by a water service board shall be in Form 1a as set out in the First Schedule.

5. The Regulatory Board shall charge application fee towards processing of the license, as set out in the Second Schedule.

Application Fee.

6. The Regulatory Board may, upon consideration of an application for a license, issue to the concerned water service board-

Issuance of License.

- (a) a provisional license; or
- (b) a full license.

7. (1) A provisional licence shall be issued to a newly created water service Board and shall be valid for a period of one year. Provisional License.

(2) A provisional licence shall contain the following conditions to be met by the licensee within one year-

- (a) the attainment of technical and financial capability to provide the services and perform functions authorised by the license or by any agent by whom its functions are to be performed;
- (b) a five year business plan for the provision of efficient, affordable and sustainable water services;
- (c) performance targets identified in a consolidated minimum service level for the licensee area;
- (d) details of planned financial and water network and sewerage network improvements on a yearly basis;
- (e) a proposed tariff structure.

8.(1) The Regulatory Board may extend the provisional license for a further period of one year if the licensee has been unable to meet the set conditions. Extension of Provisional License.

(2) Where a licensee has not met the conditions after an extension, the Regulatory Board shall not issue a full license and the existing operations of the concerned licensee shall be transferred to a willing and capable licensee.

9. A provisional licensee shall pay an annual license fee set according to rule 46 and published through notice by the Regulatory Board. Annual License Fee

10. (1) A full license issued by the Regulatory Board shall be valid for ten years. Validity of License and Basic Criteria

(2) The Regulatory Board may issue a full license to an applicant if it is satisfied that the applicant has –

- (a) a demarcated area with known population;
- (b) skills or capacities in -
 - (i) water and sanitation network development and facilities management;
 - (ii) finance and administration – accounts, corporate finance, financial modelling, project management, procurement;
 - (iii) legal;

- (iv) economics;
 - (v) environment and water resources;
 - (vi) information management and technology;
 - (vii) customer affairs;
 - (viii) communications;
 - (ix) human resources;
 - (x) physical planner.
- (c) financial capacity commitment from the government and other financiers to fund capital development in the business plan and recurrent expenditure to attain sustainability;
- (d) possession of water permits from identified sources from the Water Resources Management Authority and sewage discharge permits from the National Environment Management Authority ;
- (e) possession of infrastructure, networks and facilities for water production, transmission, distribution and waste water disposal facilities;
- (f) an initial draft five year business plan showing sources of water , capital outlays, estimates of water to be sold and revenue projections to attain sustainability;
- (g) a list of proposed cluster or clusters of agents, where feasible, in the public domain whom it proposes to contract as agents and their water service sales, populations to be served and growth projections; as well as a strategy for achieving fully functioning clusters; and
- (h) a registered physical address.

11. The Regulatory Board shall review a full license after five years and evaluate performance on all the conditions of the licence and the targets set and shall issue any orders and impose any conditions and targets to ensure efficient and economical supply of water in the licensee's area of supply.

Review of License.

12. A full license may be renewed upon expiry provided that the licensee shall make an application for renewal of the license at least six months before its expiry according to the provisions of section 57 of the Act.

Renewal of License.

13. Where a licensee, without due cause, fails to submit an application for renewal of a license, the Regulatory Board shall issue a daily penalty prescribed by the Regulatory Board in the license and the amount shall continue to accrue for sixty days and, if the failure by the licensee persists, the Regulatory Board may transfer the operations of the licensee as prescribed by the Act.

Default of Application for Renewal.

14. A license issued by the Regulatory Board to a licensee shall empower the licensee to –

Scope of a License.

- (a) create infrastructure and networks for the provision of water within its area;
- (b) create infrastructure and networks for the capture and use of rain and storm drain water;
- (c) create infrastructure and networks for the provision of water in bulk outside its area;
- (d) create the infrastructure and networks for the safe disposal of waste water or effluent within its area;
- (e) create infrastructure and networks for the hygienic and safe reuse of treated effluent and sludge;
- (f) provide services proceeding and ancillary to all the above including protection of sources of water from which the licensee is authorised to abstract water.

PART III-CONDITIONS OF LICENCE

15. (1) A licensee shall develop, maintain and update on a biannual basis the following maps of the license area-

Maps.

- (a) serviced area map showing clearly the network for the water and sewerage facilities;
- (b) un-serviced areas map which shall show clearly the informal settlements, areas considered to be low income and rural areas, and the expected projected developments;
- (c) all water sources in use and their daily yield.

(2) The maps shall be stored in digital and hard copy format and a copy of the same shall be submitted to the Regulatory Board in intervals of five years.

(3) (a) The maps shall be submitted to the local authority in the area for ease of planning and approval purposes.

(b) The licensee may be required to give a “no-objection” to any physical developments within the local authority concerned.

(4) A licensee who fails to comply with this rule commits an offence.

16. (1) Upon the issuance of the licence, or the coming into operation of these Rules, whichever is earlier, the concerned licensee shall invite all the water system operators described in section 56 of the Act in its area of supply, through a public notice, to register with the licensee within four months in order to legalise their actions.

Registration of all water system operators.

(2) All the system operators that do not adhere to the invitation for registration shall after the expiry of the notice period be deemed to be operating illegally and contrary to the provisions of the Act and shall be liable to prosecution.

(3) The licensee shall establish a complete register of all the water system operators in its area of supply showing clearly-

- (a) the location and address of each operator;
- (b) the owner of each operator;
- (c) the daily yield of the source used by each operator;
- (d) the volume of water sold by each operator;
- (e) the quality of water sold by each operator;
- (f) the quality and quantity of effluent; and
- (g) the price charged by the operator.

(4) The register of the operators shall also indicate the progress in legalising the operations of the operators by either-

- (a) appointing the operators as agents qualifying for issuance of a service provision agreement; or
- (b) establishing of adequate supervisory arrangements renewable on annual basis with the licensee with a view to clustering them with the main water service provider.

(5) The licensee shall update the register on an annual basis and submit a copy of the registered system operators to the Regulatory Board and shall also submit a list of system operators not registered to the Regulatory Board and the measures taken against them under the regulations issued by the licensee.

(6) All public operators shall on registration be required to pay the registration fee determined by the Regulatory Board.

17. (1) A licensee shall competitively procure the services of an agent according to the provisions of the Procurement and Disposal Act 2005.

Appointment of Agents.

(2) The licensee shall ensure that the agents procured meet the requirements of section 55 and 57 of the Act and shall maintain them in the categories described in the Third Schedule.

(3) For those parts within the licensee area where it has been documented through an open bidding process not to be feasible, practicable or to the benefit of the customer, the licensee may provide water services directly, subject to these Rules.

18. (1) The licensee shall ensure that an agent in any category has the following minimum qualifications and requirements-

Registration
Requirement for
Agents.

- (a) is a legal person registered as a limited liability company under the Companies Act or a Trust registered under the Trustees Act or the Trustees (Perpetual Succession) Act, or a Non-governmental Organization registered under the Non-Governmental Organizations Coordination Act, or a duly registered community based organization or a society or association registered under the Societies Act;
- (b) has a registered special purpose vehicle with the sole objective of providing water services;
- (c) possesses the organizational, administrative, technical and financial ability to provide the category of water services which are to be provided as prescribed by the Regulatory Board in guidelines; and
- (d) manage the water services on a commercial basis, in accordance with sound business principles and as a separate business enterprise and charge customers a tariff which enables the agent to meet the costs including operational costs and, except for community water services, capital costs of providing the service.

(2) The licensee shall procure the agents on the basis of the following criteria-

- (a) in respect of community or rural schemes, the agent shall be an organization which is established by the members of the community to operate the water services;
- (b) in respect of urban schemes the agent shall be a limited liability company registered to operate the water services and according to prescribed criteria by the Regulatory Board; and
- (c) in respect of Government schemes the agent shall be such legal person as is determined by the licensee.

(3) Management of water services in accordance with sound business principles requires the agent-

- (a) to put in place prescribed financial, auditing, commercial and technical systems for delivering the water services;
- (b) to put in place prescribed administrative, reporting systems, data management systems, occupational health and safety systems, operational workplace and employee polices and management systems and standards, public relations and complaints handling procedures and systems, and legal compliance and monitoring systems.

(4) The management of water services as a separate business enterprise requires that the agent shall operate as a special purpose vehicle established as a legal person with the sole objective of providing water services.

(5) An entity operating as a department or a unit within a larger or parent organization which conducts other activities which are not the provision of water services, even if the entity operates a separate bank account, shall not qualify as a separate business enterprise.

(6) With respect to Government schemes including schemes previously operated by the National Water Conservation and Pipeline Corporation the licensee shall procure an agent competitively, unless, with the concurrence of the Regulatory Board, it determines for good reason that the procurement of an agent competitively is not practicable in the particular circumstances.

(7) The licensee shall prescribe regulations under section 73 of the Act to secure compliance of its agents with prescribed standards for operation of water services and shall set performance targets on all aspects of operations through the service provision agreement.

(8) The agents procured to provide water services shall comply with corporate governance standards and guidelines established by the Regulatory Board and published in the Gazette, but which shall in any case not derogate from the following minimum corporate governance standards-

- (a) in respect of community based agents, the organization shall-
 - (i) be representative of the entire community;
 - (ii) bound in its objectives and constitution to provide water services to all members and other residents of the community without discrimination; and
 - (iii) establish a management committee or other board of management that is representative of all the interest groups including gender, within the community and which is democratic, responsive and accountable.

-
- (iv) shall engage, by way of a management contract, employment or otherwise, a manager of the water services with the prescribed requisite professional competence to manage the water service on a commercial basis and on sound business principles.
- (b) In respect of an urban agent, the organization shall-
- (i) be a legal person managed and accounted for as an independent or separate business enterprise;
 - (ii) comprise a board of directors or other board of management whose members shall be determined in accordance with criteria established by the Regulatory Board in its corporate governance guidelines.
 - (iii) ensure that the members of the board of directors shall have as a minimum an O level certificate or its equivalent in addition to such professional qualifications and represent such stakeholder categories or interests, and such other criteria as may be specified by the Regulatory Board in its corporate governance guidelines.
 - (iv) recruit its managing director and other senior personnel competitively through a process involving open advertisement.
- (c) Members of the board of directors or management of an agent shall be chosen following a process of open competition and on the basis of the constitutional requirement that two thirds of the members must not be from the same gender, in addition to their educational qualifications and relevant professional or business experience.
- (d) A licensee and an agent shall not make payments out of its revenues or provide other financial support that may be inconsistent with its core mandate of water services provision unless as provided in these rules.
- (e) Following the coming into effect of these Rules, each licensee shall review, and subject to compliance with reasonable conditions which the concerned licensee may impose, reissue the service provision agreements subsisting within its area of supply for a fixed renewable duration of five years.
- (9) Upon the expiry of the first five years following the coming into effect of these Rules, the concerned licensee shall have the right to procure new agents competitively on the basis of the applicable procurement rules governing public authorities.

(10) In order to enable the transfer of water services from the first agent to another agent, all service provision agreements shall contain a provision for the surrender of assets, handover of responsibilities, functions and data by one agent to another and all leases shall contain a commensurate provision for the hand back to the licensee of the assets and infrastructure upon expiry of the service provision agreement.

19. (1) The licensee shall determine and map the exclusive area of provision of an agent which map shall be attached to the service provision agreement and no other agent shall be appointed or allowed to operate in that area except as may otherwise be authorized under the Act or these Rules.

Exclusivity and Loss of Exclusivity.

(2) If the agent has exclusive rights conferred under this rule, and does not provide the service to customers and does not have an appropriate or any credible plan to provide such services in its approved business plan or fails to provide the service as specified in the approved business plan, the licensee may revoke the exclusive rights with respect to that area of supply after giving notice to the concerned agent and affording the agent an opportunity to be heard.

(3) The licensee shall ensure that measures of revoking exclusivity are prescribed in the service provision agreements issued.

(4) Where the agent holds the exclusive right of service provision in an area, the licensee shall ensure that all other registered system operators in the area with annual operating licences sign sub-contracting agreements with the agent in order to operate under the area and are eventually clustered into the main service provider taking into account consumer interest.

(5) The agent will monitor the quality and quantity of service provision in the exclusive area and report to the licensee and the licensee shall enforce the standards as against the water system operators and report on all such operations to the Regulatory Board.

20. (1) The licensee shall prescribe in the service provision agreement or its regulations the power, process and functions that an agent may subcontract.

Sub-Contracting of Obligations.

(2) It shall be a condition of a service provision agreement that subcontracted obligations remain the responsibility of the agent and that the subcontract shall be assigned to the licensee in the event of termination of the service provision agreement.

(3) The licensee shall prescribe in the service provision agreement arrangements that may be entered into between an agent and a third party provider.

21. Where there exists within the limits of supply of a licensee a source of supply of water other than that supplied by the licensee

Closure of unsafe supplies of water.

which, in the opinion of the licensee does not provide a suitable supply of water for drinking and domestic purposes, the licensee in collaboration with the Water Resources Management Authority and the public health officer order such alternative source of supply to be closed, and shall by order, compel users of such water to take a supply from the licensee.

22. (1) On completion of the procurement process and payment of the applicable fee by the concerned agent, the concerned licensee shall submit to the Regulatory Board the service provision agreement for approval.

Approval of
service provision
agreement.

(2) The Regulatory Board shall within three months approve the service provision agreement only if the agreement meets the criteria issued and where it is not possible to approve the service provision agreement or the amendment the regulatory board shall notify the licensee of the reasons as to why the service provision agreement has not been approved.

23. For avoidance of doubt the Regulatory Board shall not approve the agreement unless it contains performance targets for each of the performance indicators as set out in the Third Schedule for each agent according to the category of provider outlined and has also made provision of how the licensee shall monitor the performance of other small operators identified to be operating within the area of supply.

Requirement for
performance targets.

24. (1) The licensee shall ensure that small-scale water operators in rural areas and peri-urban areas established by community efforts prior to the effective date are registered and licensed on an annual basis and regulated by the licensee for water quality and service quality.

Small-scale service
system operators.

(2) The licensee shall progressively cluster these operators with the agent for the respective area of supply, provided that the licensee shall provide the technical and financial assistance to the concerned agent to successfully absorb the cost and operations of the small scale operators.

(3) Where the small scale system operators are unable to meet the set water quality standards or service standards set over a one year period and places the health of the public or its customers at risk the licensee may invoke the provisions of rule 21.

PART IV-INFRASTRUCTURE AND FACILITIES

25.(1) On the effective date every licensee constituted under Section 51 of the Water Act shall, pursuant to Section 53(3) of the Act, for the purpose of the provision of water services have the ownership and possession of any land, premise, plant, equipment and facility, together with any liabilities accruing against the foregoing assets.

Ownership of Assets.

(2) A licensee may apply to the Minister for the compulsory acquisition of any land, under Section 78 of the Act.

(2) (i) Any such land, premises, plant, equipment and facility at the time having been acquired, purchased or otherwise owned by any agent, council or any other customer shall be relinquished, assigned, vested or sold, as the case may be, to the respective licensee within twenty four months after the effective date.

(ii) For the avoidance of doubt, any property belonging to Government, State Corporation or local authority shall be assigned to the licensee within the period prescribed in this rule.

(4) A licensee shall take steps to obtain and secure way leave for water services installations within its license area.

(5) It shall be an offence for anyone to enter into or interfere with, puncture any equipment facility and infrastructure of a licensee.

26. (1) Each licensee shall develop water harvesting, abstraction, storage, treatment, and transmission facilities to supply water in bulk to its agents, other licensees or other users as prescribed in the license, and charge them appropriately.

Supply of Water in Bulk.

(2) Where a licensee is to supply water in bulk to its agents or other licensees, it shall, in accordance with section 66 of the Act, submit a supply of water in bulk agreement and proposed supply of bulk water tariffs to the Regulatory Board for approval.

(3) Where a licensee is to supply water in bulk to another licensee, the supply of water in bulk agreement shall provide details on whether there is inter basin transfer of water; the responsibility for financing of needed infrastructure and facilities; what arrangements are proposed for the supply of communities or areas that are riparian to the water sources, the main supply line between the concerned licensees; the tariffs applicable and the like.

(4) A licensee may procure, under suitable arrangements, a private investor or investors or third party or parties to assist the licensee meet its obligations to supply water in bulk to agents or other licensees.

(5) The Regulatory Board shall, upon approving a supply of water in bulk agreement and proposed supply of bulk water tariffs, establish the commercial and operational arrangements under which the licensee shall undertake supply of bulk water and the manner in which the Regulatory Board shall oversee the implementation of the agreement and the tariffs.

(6) The supply of water in bulk agreement under paragraph (4) shall be entered into in accordance with the requirements of the relevant sections of the Act and shall include-

- (i) standard of quality of the water to be supplied;
- (ii) continuity of water supply or hours of water supply;
- (iii) maintenance of adequate reserves of water by the bulk supplier;
- (iv) tariffs to be paid by the purchaser for the bulk supply.
- (v) any other financial arrangements.

(7) The supply of water in bulk agreement shall be supplemented by the supply of bulk water operational manuals that shall be developed by the bulk water supplier and the purchaser of the bulk water supply.

(8) The supply of water in bulk operational manuals shall contain details of the operations and activities that will be undertaken by the water in bulk supplier and the purchaser in the delivery of treated water, including normal and abnormal operational procedures, planned and unplanned work, quality assurance, quality control, calibration and location of flow meters, access to assets and sharing and exchange of information and other matters to be prescribed by the Regulatory Board.

(9) It shall be a general condition of the license and any service provision agreement that water service needs of the service providers along the bulk water network are met to the agreed proportions, and the water in bulk supplier shall not, for the whole period of the agreement, retain, use or supply water in bulk to another new service provider, unless such alternative provision has been agreed upon between the water in bulk supplier and first service provider.

(10) The Regulatory Board shall only approve a supply of water in bulk agreement upon confirmation that the water in bulk supplier has a valid extraction permit giving it abstraction rights commensurate with its water sale requirements from the Water Resources Management Authority.

(11) Notwithstanding the fore going provisions, in the interest of the public and where technically and economically feasible, the Regulatory Board may order the licensee to either supply water in bulk to another licence area or enter into a service provision agreement with an agent who shall supply water in bulk to third parties within its area of supply.

27. (1) Each licensee shall ensure that every urban centre, rural and peri-urban areas shall have appropriate and operational sewerage or sanitation systems, as the case may be, according to the targets set in the license issued by the Regulatory Board and approved in the capital works plan.

Sewage Treatment and Disposal.

(2) Each licensee shall develop and submit for approval to the Regulatory Board, a sewerage investment plan, based on any national sewerage master plan for the time being in force, within twenty four months of the effective date.

(3) Each licensee and its agents shall ensure that there is adequate safety and security arrangements for sewerage infrastructure and networks, sites, facilities, and shall include details of such arrangements in its capital works plan.

(4) Each licensee and its agents shall ensure that in the license area there is responsible treatment and disposal of sewage and sludge to protect the environment and human health from untreated wastes or to safely and hygienically use treated waste and shall enforce this rule against property owners in urban settlements.

(5) Each licensee shall ensure that sewerage standards as may be established by the responsible public authorities are enforced in the license area; and in this regard shall require that all new designs for water and sewerage infrastructure and networks shall include tertiary use of waste such re-use of waste water, manure or fertilizer, bio-gas, and the like.

(6) A licensee or agent may, where feasible, procure or otherwise enter into mutually agreeable arrangements, including sub-contracting, with non public sector entities, including private sector and civil society organizations, in order to expand the sewerage infrastructure and networks, or to provide sewerage services.

(7) Where there are no sewerage networks or sewerage networks cannot be sustained the licensee shall collaborate with other public agencies and promote and enforce the use of other safe methods of waste water disposal and sanitation.

(8) Sewerage services shall be divided into the following categories-

- (a) public sewerage networks and facilities developed by the licensee and operated by its appointed agents;
- (b) private sewerage networks developed by private developers under public private partnership agreements between the licensee and the private person or entity and approved by the Regulatory Board.

28. (1) Each licensee shall, within its area of supply, establish all the details of the assets and infrastructure used for the provision of water services including an inventory and a valuation, details of the ownership of the assets and infrastructure including where appropriate, the instruments of ownership such as title deeds for land documents evidencing ownership of moveable assets.

Facility Development
and Procurement.

(2) Each licensee shall take relevant steps to ensure that assets and infrastructure owned by the Government and state corporations within its area of supply are assigned to and vested in the concerned licensee:

Provided that any actual or contingent liabilities on those assets and infrastructure, unless dealt differently with by Government or the concerned state corporations, shall be taken up by the concerned licensee.

(3) Infrastructure and assets, which prior to the commencement of the Act were in the possession of local authorities or other water services providers-

- (a) subject to satisfactory demonstration by the local authority or other agent, that it used its own financial resources to acquire and or develop the assets and infrastructure; or
- (b) where the Government provided or secured the funding that was utilized to acquire and or develop the assets and infrastructure, which it has repaid the Government and or obtained a waiver of the liability from the Treasury,

shall be deemed to belong to the concerned local authority and the same shall be assigned to the licensee according to these Rules otherwise the assets shall vest in the Government and be in possession of the licensee and be managed according to criteria prescribed by the Regulatory Board.

(4) Each licensee shall develop a five-year capital works plan as prescribed in the license issued to it by the Regulatory Board.

(5) All assets and infrastructure developed, rehabilitated using funding obtained by or for the benefit of a licensee shall be vested in the concerned licensee.

(6) All public sector funding for investment in a licensee area of supply, including funding provided through the Water Services Trust Fund shall be deemed to be funding for the benefit of the relevant licensee and the ownership of the assets acquired using public sector funding shall be vested in the said licensee.

(7) A private person or a community group may acquire funding from non-public sources for investment in water services assets and infrastructure and such assets shall vest in and be owned by the private person or community group as the case may be but shall be operated according to any relevant rules and regulations made under the Act.

- (a) Where, since the commencement of the Act the licensee has made capital investments into existing

assets and infrastructure which at the commencement of the Act were in the possession of and were used by local authorities or community schemes, the ownership of the assets and infrastructure shall be apportioned proportionately based on the value of the respective parties' investments.

(b) If and when the proportion of capital investment into the assets by the licensee equals to 100% of the value of the asset, then the asset shall transfer and be vested in the licensee exclusively and the previous owner shall execute the necessary transfer instruments to secure the effective vesting of the asset in the licensee.

(8) (a) A licensee shall apply to the Ministry, through the Regulatory Board, in order to use assets and infrastructure to secure borrowing from financial institutions.

(b) Any agent who borrows from a financial institution shall not utilize the assets and infrastructure leased or made available to them by the concerned licensee to secure the borrowing.

(9) Where a licensee seeks to delegate any aspect of capital works whether rehabilitation or expansion to an agent it shall reduce such delegation in writing clearly setting out-

- (a) the description of the works;
- (b) the cost of the works;
- (c) expenses to be met by the service provider and to be reimbursed by the licensee;
- (d) delegation works fee to be paid by the licensee to the agent;
- (e) the manner of completion, inspection and acceptance of such works; or
- (f) the maintenance of such works after completion.

(10) An agreement made under this rule shall be enforceable against the licensee by any person aggrieved in relation to rehabilitation, development and maintenance of such facilities.

(11) In case of a major breakdown of infrastructure during emergencies the concerned agent shall upon notification to the licensee carry out repairs speedily to minimize the inconveniences to the public and where such breakdown is the responsibility of the licensee in the service provision agreement the agent shall document the costs of such repair which shall be reimbursed by the licensee.

(12) The concerned agent shall furnish the licensee with a detailed breakdown of the costs incurred in carrying out the works and if the costs are not agreed upon by both parties they may refer the matter to the Regulatory Board, and any party dissatisfied may apply to the Water Appeal Board.

(13) For the purposes of any payment required to be made under this rule, the Regulatory Board may require the concerned licensee to provide such security as it may reasonably request.

(14) Where this rule applies, the concerned licensee may pay to the concerned agent the delegated works fee by setting it off from the licensee remuneration levy amount.

29. (1) A licensee may lease the assets and infrastructure which belong to non-Government or public entities on appropriate finance leasing terms which reflect the value of the assets and infrastructure and shall avail the assets and infrastructure so leased to the relevant agent to use in providing water services on corresponding lease terms.

Leasing of Facilities
and their
Development.

(2) The Regulatory Board shall approve the lease arrangement and any development agreement and any lease fees or fees associated with the use by the concerned licensee of such assets and facilities owned by a third party.

(3) On expiry of the lease agreement or development agreement the concerned licensee shall own all such assets and shall maintain the assets and records according to guidelines issued by the Regulatory Board.

(4) Each licensee shall ensure that any development designs approved by the licensee have adequate provision of expected future growth and expansion of demand for water services and of the sewerage infrastructure and networks, as well as compensation or recovery of investment by the concerned developers, subject to approval by the Regulatory Board.

30.(1) Each licensee shall maintain water and sewerage assets and facilities under its control as prescribed in this rule and under the licence and service provision agreement.

Facilities
Management.

(2) (a) Each licensee shall develop and maintain a facility management system which shall include a facilities inventory of all assets and facilities used in the provision of water services and shall submit an updated facility inventory to the Regulatory Board every three years.

(b) In particular each licensee shall ensure that-

- (i) all agents within its area of supply maintain all water service assets under their control to include routine and preventative maintenance for all operating and

non-operating assets required to provide the services and monitoring the proper functioning of all facilities including small equipment which would routinely be replaced in the usual course of sound water and sewerage engineering practices;

- (ii) there is an updated detailed asset register attached to each service provision agreement;
- (iii) every agent maintains and adheres to an asset management plan as prescribed in the service provision agreement.
- (iv) all significant changes in the value of assets shall be recorded in the inventory of assets according to the standards prescribed by the Regulatory Board.

(3) For the purposes of this rule, where an agent is unable or fails to act accordingly, a licensee shall have the power of entry into any premises to undertake rehabilitation maintenance or repairs and shall have the power to order any owner of premises to take such measure to prevent the pollution, depletion or waste of water.

31.(1) The object and purpose for which the Fund is established is to finance extension of water services through –

Contingency Funds for
Asset Development.

- (a) renewal of plant, equipment and facilities;
- (b) enlargement or expansion of water services networks;
- (c) improvement of any plant, equipment, facilities or works used for the purposes of the license; or
- (d) for meeting any other prescribed contingency authorised by the Regulatory Board which is incidental to sustainable water service provision.

(2) The sources of the Fund shall be –

- (a) the asset renewal amount set aside for the licensee in the tariff adjustment process and remitted on a monthly basis by each agent;
- (b) the revenue generated by agents of the licensees which is not part of the regulatory levy, the service provider income or the licensee administration costs and the revenue shall be remitted on an annual basis by the agents to the fund;
- (c) any amounts of money given by third parties to build up the Fund;

(d) any other amount provided for in the tariff adjustment process for which there is a delay time in its usage.

(3) The Licensee shall open a special account into which all monies due to the Fund shall be paid.

(4) (a) There shall be paid out of the Fund such monies for purposes of-

- (i) the design of plant and facilities for the licensee;
- (ii) the construction of plant and facilities of the licensee;
- (iii) the purchase of equipment for water service projects.

(b) The plant, facilities and equipment to be financed are those captured in the capital works plan of the licensee and the annual work plan of the licensee and approved by the Regulatory Board.

(5) The activities by the Fund shall be on the basis of annual work plans and cost estimates which shall be prepared by the Licensee based on the service needs plan of its agents and captured in the capital works plan of the licensee and the projects shall be those approved by the Regulatory Board.

(6) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund was established.

(7) The Licensee shall –

- (a) administer the Fund according to these rules;
- (b) inspect the records of the sales of water services by an agent to ensure that there is a monthly or annual deposit as the case may be by each agent into the Fund as determined during the tariff adjustment process or annual reconciliation of accounts;
- (c) keep books of account and other books and records in relation to the Fund of all the various activities and undertakings financed from the Fund;
- (d) submit annual audits of such books and records for the funds and activities to the Regulatory Board;
- (e) publish in the annual report of the licensee activities undertaken by the Fund;

(8) Sums set apart for the fund may from time to time be invested in Treasury bills and the interest arising from such securities may also be invested in the same securities so as to accumulate at compound interest for the credit of the fund in question.

(9) The Regulatory Board shall-

- (a) inspect the records of the licensee and its agents to ensure that there is remittance as required by these rules into the Fund;
- (b) inspect the Fund and any activities carried out under the Fund.

(10) It shall be an offence under section 105 of the Act –

- (a) For the licensee to fail to maintain the Fund in accordance with these rules.
- (b) The agents to fail to remit the determined revenue to the Fund in accordance with these rules.

(11) In addition to the penalty under paragraph (10) the person is liable to pay any damages that may become recoverable as remedy for any loss, damage or injury that may be sustained by reason of such default.

PART V-TARIFFS REGULATION AND FINANCIAL ARRANGEMENTS

32. This Part shall apply to all licensed services which are not open to competition and whose tariffs are subject to regulation by the Regulatory Board

Scope.

33.(1) Where no price cap applies in the licence conditions, each licensee and its agents whose tariff rates are subject to review by the Regulatory Board pursuant to the condition provided for in respective licences shall file with the Regulatory Board applications for the adjustment of such tariff rates.

Adjustment of Tariff Rates.

(2) All licences shall contain the period in which such tariffs may be adjusted at least once in every three years.

34.(1) All applications for approval of tariffs shall be filed with the Regulatory Board and each licensee shall ensure that for each agent in its area of supply, tariffs shall be sufficient to cover the reasonable cost of-

Applications for tariff approval.

- (a) recovery of the cost of water purchase;
- (b) providing the services including payment of all statutory levies, fees and deductions;
- (c) overhead ,operational and maintenance costs;
- (d) debt servicing or recovery of the cost of capital not financed through any grant, subsidy or donation;

- (e) providing for the replacement , refurbishment and extension of water service works;
- (f) where applicable in the case of a private investor or local authority providing a regulated return on investment;
- (g) ensuring that all households have access to basic water services.

(2) Each licensee shall ensure that all tariff applications conform to the methodology and formula defined in the relevant licence and tariff guideline or such other terms as the Regulatory Board may prescribe.

(3) Every tariff adjustment proposal for water services provided to customers and other users within a licensee's area of supply must differentiate, where applicable between at least the following categories –

- (a) water supply services to households;
- (b) industrial use of water supplied through a water services work;
- (c) water supply services other than those specified in (a) and (b);
- (d) sewerage or sanitation services to households;
- (e) pre-test and discharge of industrial effluent to a sewerage treatment plant;
- (f) Sewerage and other incidental services other than those in (d) and (e).

(3) Every tariff adjustment proposal must differentiate where applicable between at least the following levels of service-

- (a) the supply of water to a household through a communal water services work;
- (b) the supply of water to a household through a water services work or customer installation designed to provide a controlled volume of water;
- (c) the supply of water to a household through a water services work or customer installation designed to provide an uncontrolled volume of water;
- (d) the supply of sanitation services to a household connected to a sewer;
- (e) The supply of sanitation services to a household not connected to a sewer.

(4) Each licensee shall ensure that all tariff applications contain relevant documentation, including all calculations and other information in support of the application.

(5) Tariffs charged by community owned agents in the rural areas shall be based on an appropriate subsidy, to be agreed with the Minister and the Regulatory Board of the cost of capital invested in the infrastructure and assets.

(6) Community owned agents and other water services providers which have obtained funding from public funds for investment in the water services, shall not distribute profits to shareholders or other members in the form of dividends or otherwise, but must reinvest all operational surplus, after meeting costs of the provision of the services, the improvement of the services, including the extension of the water service infrastructure.

35. (1) The Regulatory Board shall ensure that a tariff for the supply of water to a household through a communal water services work or through a customer installation designed to provide a controlled volume of water must be set at the lowest amount, including zero, required to ensure the viability and sustainability of the water supply services.

Principles to ensure viability and sustainability.

(2) The Regulatory Board shall ensure that a tariff for the supply of water through a water services works or customer installation designed to provide an uncontrolled volume of water to a household must include a volume based charge that discourages wasteful or inefficient water use and takes into account the incremental cost that would be incurred to increase the capacity of the water supply infrastructure to meet any incremental growth in demand.

(3) The Regulatory Board in consultation with the Minister shall consider the right of access to basic water supply and basic sanitation when determining which water services tariffs are to be subsidized.

(4) The Regulatory Board in consultation with the Minister shall ensure that a licensee will use any source of funds including funds received from the central government or the local government or willing donors or from any other source to subsidize a water services tariff.

(5) The Regulatory Board shall supervise and oversee an evolutionary process of clustering of agents as identified and prioritized by each licensee and for this purpose-

- (a) where proposed tariffs exceed certain averages for the time being set by the Regulatory Board, the Regulatory Board may require the licensee to cluster or aggregate agents to achieve viability or sustainability;

- (b) where, within twenty four months from the date of entry of these Rules, an urban agent's customer base is below twenty thousand customers or a rural agent's customer base is below eight thousand customers with or without subsidy, the Regulatory Board may require the licensee to cluster or aggregate agents to achieve viability or sustainability;
- (c) where the Regulatory Board is of the opinion that an agent is non performing, it may require the licensee to cluster or aggregate the concerned agent to achieve viability or sustainability;
- (d) where the Regulatory Board is of the opinion that an agent is performing, it may, in lieu of clustering, or in addition thereof, require the concerned licensee to increase the said agent's area of service.

36. (1) A licensee shall at least thirty days before applying for any proposed tariffs, give notice in the Gazette and in such other manner as it considers necessary.

Notice on tariffs.

(2) The notice shall-

- (a) specifying the name and particulars of the licensee or class of agents providing the service to which the tariffs relates;
- (b) stating the reasons for the proposed review of the tariffs and the proposed new tariffs;
- (c) specifying the time within which representation or objections may be made to the proposed new tariffs and the date, time, duration and place of the tariff hearing, and who needs to be consulted.

(3) The Regulatory Board shall in considering the application for review of the tariffs take into account such written representations or objections received under paragraph (2) (c).

37.(1) The Regulatory Board may reject an application for the imposition of proposed tariffs if, after due consideration including affording the concerned licensee and or agent through the licensee, an opportunity to make representations, it is of the view that the proposed rates are unjustifiable.

Decision on tariffs.

(2) A decision of the Regulatory Board rejecting the imposition of proposed tariffs shall-

- (a) be in writing;
- (b) state the reasons for the rejection; and
- (c) be made available to the licensee.

(3) Upon approval by the Regulatory Board of any new tariffs, a licensee shall notify its customers of the new tariffs through publication in the Gazette and shall in such notice provide for a grace period of not less than thirty days before implementing the new tariffs.

(4) In the public interest and to cover extraordinary circumstances to enable sustainable and viable provision of water services, the Regulatory Board may order an extraordinary tariff adjustment to which the requirements of rule 36 shall not apply and which shall commence upon a notice period of thirty days.

38.(1) The Regulatory Board may, on its own motion or pursuant to a complaint investigate any tariffs charged by a licensee.

Investigation and suspension of tariffs.

(2) An application for investigation, suspension or rejection of any tariffs brought under paragraph (1) shall be in writing and shall specify the name and address of the petitioner and shall state the interest of such petitioner and the reasons why such tariffs should be investigated, suspended or rejected.

(3) Where after the investigations, the Regulatory Board is of the view that the tariffs should be suspended or rejected, it may reject or suspend such tariffs:

Provided that in case of a suspension of the tariffs the Regulatory Board shall notify the concerned licensee and give such licensee twenty (20) days to respond to the intended suspension.

(4) Provided further that in the event of suspension of tariffs under this rule, the applicable tariffs shall be those in force immediately before the tariffs that are suspended.

39.(1) On the effective date the licensee shall ensure that all water system operators within the limit provided for by section 56 of the Act who provide services to the public shall file with the Regulatory Board schedules of their tariff rates including those of their agents and correspondents.

Filing of Tariffs.

(2) The operator, unless exempted by the Regulatory Board, shall only charge its customers the filed tariffs and shall further ensure that all filed tariff rates are printed and kept open for public review and inspection and shall furnish its customers upon request with such schedules.

(3) The Regulatory board shall after one year of the effective date determine a tariff that shall be charged by all water operators taking into account consumer interests and an adequate rate of return for the operator.

40. (1) Upon the commencement of the service provision agreement the present tariff level and structure in the business plan of the concerned agent shall be approved by the Regulatory Board on

Tariff Adjustment.

approval of the service provision agreement.

(2) The subsequent applications for tariff adjustments shall follow these Rules and the tariff guideline.

(3) The Regulatory Board may allow for automatic tariff adjustments in a service provision agreement whose implementation shall be carried out by giving notice by the concerned licensee to the public in a Gazette notice or in at least one newspaper with national circulation at least four weeks in advance of the implementation of the adjusted tariffs.

(4) It shall be a condition precedent to any agreement between a third party and a licensee that any payments due to the third party in relation to the use of assets shall be justified and their use before they are approved by the Regulatory Board. Only justified and documented expenditures to third parties shall be included in the tariff adjustment proposal.

41.(1) Where in the process of tariff adjustment a licensee and its agent do not agree to the adjustment proposal or where one party fails to respond to the request of the other party within sixty days, the aggrieved party shall refer the matter to the Regulatory Board for determination.

Disagreement over
Tariff Adjustment.

(2) Where one of the parties is aggrieved by the decision of the Regulatory Board it shall declare a dispute and submit the matter to the Water Appeal Board for resolution within fourteen days of the decision of the Regulatory Board.

42.(1) Subsidies received during the service provision agreement period must be notified by the concerned agent to the concerned licensee and the Regulatory Board.

Subsidies and Grants.

(2) The Regulatory Board may initiate a tariff review if the subsidies were not disclosed and may take any action including imposing any appropriate penalty to the agent or the licensee for failure to disclose subsidies.

43.(1) A licensee shall ensure that each agent sets up a revenue account which shall be a bank account set up to receive all funds except deposits collected from customers.

Revenue Account.

(3) A licensee shall ensure that the revenue account shall be run and administered in accordance with conditions prescribed by the Regulatory Board.

(4) In cases where an agent or the licensee has a loan obligation, the concerned agent or licensee shall open a separate loan repayment account into which adequate funds shall be paid from the revenue account, and out of which loan repayment instalments shall be made as and when they fall due.

5) It shall be an offence under the Act for a person to breach the requirements of setting up, maintaining and administering a revenue account

44.(1) An agent or a licensee may submit to the Regulatory Board, according to the requirements in the license, a request for a tariff review in order to adjust the tariffs, the agent income or the licensee remuneration.

Period of Approval.

(2) A tariff adjustment proposal shall be established in cooperation by both parties justifying the request with all the necessary documentation and estimations.

(3) The Regulatory Board shall within ninety days of receipt of the proposal submitted to it either grant an approval or reject the tariff adjustment proposal.

(4) In the event of rejection of the proposal, the concerned licensee or the concerned agent shall seek negotiations with the Regulatory Board on the ground of the written objections to the Regulatory Board.

(5) If no consensus is reached, the concerned licensee or the agent may appeal to the Water Appeal Board:

Provided that before referring the matter to the Water Appeal Board the licensee shall inform the Regulatory Board in writing at least fourteen days in advance of its intention to seek appeal to the Water Appeal Board.

45. (1) In issuing a license and the service provision agreement the Regulatory Board shall allow for licensee remuneration and service provider income which may include performance based incentives.

Licensee
Remuneration and
Service Provider
Remuneration.

(2) The licensee's and service provider's remunerations shall form part of tariff levels and tariff structure and all adjustments thereto need the prior approval of the Regulatory Board.

(3) The Regulatory Board may adjust the remuneration of either the licensee or the agent by order based on analysis of information available.

46. (1) The Regulatory Board may from time to time prescribe fees payable in respect of any license issued or service performed under the Act.

Other Financial
Provisions.

(2) Every fee or levy payable to the Regulatory Board in connection with applications for licenses or any other matter shall be paid in full before the license is granted.

(3) Unless otherwise prescribed by the Regulatory Board each licensee shall make yearly payment of the annual operating license fees by the first day of July of each calendar year, but not later than three months after the end of the licensee's financial year.

(4) Where any licensee is required to pay fees to the Regulatory Board, or where any agent is required to pay a levy to the Regulatory Board on the basis of information or records in the custody of such licensee or agent, the licensee or agent shall submit a declaration to the Regulatory Board in the manner prescribed by the Regulatory Board attesting to the completeness and accuracy of the information upon which such computation of fees is based.

(5) Where a license or an agreement under a license requires that payment of a license or an annual operating fee be based on a percentage of a licensee's gross annual revenues, the base for calculating a licensee's gross annual revenues shall include:

- (a) payments from customers and other users; and
- (b) the amount billed including uncollected payments from customers and other customer accounts

(6) All fees, levies and monies payable to the Regulatory Board under these Rules shall be recovered summarily as a debt due to the Regulatory Board.

(7) A licensee shall ensure that agents keep the accounts of each and all its water services separate and distinct from the accounts of any other business transacted by the agents.

47.(1) A licensee shall ensure that the annual statement of accounts of an agent shall be examined and audited by such competent and impartial persons as the Regulatory Board may appoint or approve.

Audit of Water Services.

(2) A licensee shall ensure that its agents give to the auditor access to such books and documents relating to its water services as are necessary for the purposes of audit, and shall when required furnish to the auditor all vouchers and information requisite for that purpose, and shall afford the auditor all facilities for the proper execution of his duty.

(3) Any report, or a copy thereof, made by the auditor shall be forwarded to the licensee and to the Regulatory Board.

48.(1) A licensee shall ensure that its agents set apart in any year out of their revenue such sums to form and maintain a reserve fund, for the purpose of making good any deficiency which may at any time occur in the amount of divisible profits, or of meeting any extraordinary claim or demand which may at any time be made upon the licensee.

Contingency and Reserve Funds.

(2) Any sums set apart for the formation or maintenance of a reserve fund may from time to time be invested in securities in which trustees are authorized to invest trust moneys and the dividends and interest arising from such securities may also be invested in the same or like securities so as to accumulate at compound interest for the credit of the fund in question.

(3) A licensee shall ensure that its agents shall transfer to any reserve fund or contingency fund any sum then standing to the credit of any existing reserve fund or contingency fund, as the case may be.

(4) Whenever, and so long as, the aggregate amount standing to the credit of the reserve or contingency fund together amounts to, or by reason of such transfer as aforesaid, exceeds a sum which may be specified by the Regulatory Board, no contribution from the revenue of the undertaking shall be made to either of the funds, and the interest and dividends on the funds shall not be invested but shall be treated as income of the undertaking.

(5) The aggregate amount which subject to the provisions of paragraph (4) of this rule, may be carried by a licensee or its agents in any year to the formation or maintenance of the reserve fund and contingency fund shall not exceed a sum equal to five per cent of the capital expenditure already incurred by such water undertaker for the purposes of his undertaking.

49. (1) A licensee or an agent shall not carry forward at the end of any year to the credit of the profit and loss account any sum exceeding the total of the following amounts, that is to say-

Prohibited Carrying Forward.

- (a) the amount required for interest which he is entitled or required to pay, but has not paid, in respect of that year;
- (b) an amount equal to the total sum which he will be required to pay during the next following year as interest on any mortgages or debenture stock;
- (c) an amount equal to the total sum which he might lawfully distribute as dividends on the preference and ordinary capital of the undertaking in respect of the next following year.

(2) Any sum which, but for the provisions of this rule, might at the end of any year have been so carried forward as aforesaid shall be applied towards the reduction of water charges in future years.

(3) All remuneration, pensions and annuities paid by the licensees and their agents shall be within the benchmarks set by the Regulatory Board to ensure that water services shall remain affordable and sustainable.

Remuneration Pensions and Annuities.

50.(1) Each licensee shall develop, maintain and implement in coordination with other public agencies an emergency plan for the license area to mitigate emergencies related to water including water borne epidemics, pollution of water supplies, depletion of water supplies, droughts or floods .

Emergency Plans.

(2) Each licensee shall be required to inform the Regulatory Board the action plan to be taken at the first sign of the imminent risk

of emergencies in the licensee's area of supply that affects the public and the general environment.

(3) The emergency plan shall include a public communication plan, actions to be promoted to the public to mitigate the emergency, provision of alternative sources of safe water and time bound actions, processes and resources needed to contain the emergency.

PART VI-REPORTING AND RECORD KEEPING

51. For purposes of maintaining the national information system on water services each licensee shall maintain and ensure that all agents in its area of supply maintain equipment, accurate records and accounts relating to all aspects of its operations as shall be prescribed in the license.

Equipment and Record Maintenance.

53. Where studies and forecasts are conducted, the licensee shall retain copies of all such reports and forecasts in any retrievable form and in digitized or hard copy for a period of at least fifteen years or as specified by the Director of Archives and Documentation through the Regulatory Board.

Duration and Form of Record Keeping.

54. (1) Each licensee shall submit to the Regulatory Board quarterly reports in frequency, content and quality which shall contain at a minimum progress in-

Regular Reports.

- (a) network expansion and rehabilitation;
- (b) in commercial growth; and
- (c) in financial sustainability and viability.

(2) The reports shall cover all agents and other providers operating under the licensee area of supply.

55. (1) Each licensee shall submit to the Regulatory Board and to the public, within three months of the end of the financial year an annual report which shall include-

Annual Report by Licensees.

- (a) capital works plan implementation report;
- (b) the licensee's achievement report;
- (c) service obligation;
- (d) performance report for all the agents in its area of supply; and
- (e) the financial report reflecting the levels of tariff revenues, subsidies, and other contributions by the agents.

(2) Each licensee shall submit to the Regulatory Board an audited financial report within six months of the end of the financial

year and shall endeavour to have all accounts of its agents audited on an annual basis, and if so requested by the Regulatory Board, submit the audited financial report of any of the agents.

56.(1) Each licensee shall ensure that its agents provide reports to it according to the Regulatory Board guidelines, for onward transmission to the Regulatory Board.

Reports by the Agents.

(2) The reports shall be transmitted to the Regulatory Board by the licensee on time and in their original form.

(3) The reports generated by a licensee and its agents shall be used to target subsidies, financial assistance and technical assistance from the Ministry and financial assistance from the Water Services Trust Fund.

(4) Non-compliance with reporting and record keeping by a licensee or its agents shall be published by the Regulatory Board and shall be considered during tariff adjustment applications by the concerned licensee or its agents.

57.(1) Each licensee shall provide information to the public on plans and operations in the form, substance and frequency determined the Regulatory Board.

Public Reporting and
Transparency.

(2) Such public information as is contemplated under this rule shall be transmitted by appropriate combination of the following media-

- (a) annual and quarterly reports;
- (b) newspapers of wide circulation;
- (c) newsletters and other internal publications;
- (d) websites and other electronic communication;
- (e) radio and television; or
- (f) public forums.

58. (1) The Regulatory Board shall maintain a database of all information received under these Rules for the purposes of water service management.

Maintaining
Information.

(2) Any person requiring water service data from the Regulatory Board shall make an application in a standard form as may be prescribed.

(3) The applicant shall pay a prescribed fee to be published in the Gazette for the data, unless the Regulatory Board is satisfied that the data is to be used for research or non-commercial purposes.

(4) The Regulatory Board shall respond to the request for water service data within fourteen days from the date of receipt of the application.

(5) Data provided by the Regulatory Board to an applicant shall not be transferred to a third party and the Regulatory Board shall not be liable for any errors or omission in the data.

(6) The citation of any publication that uses data from the Regulatory Board shall be submitted to the Regulatory Board with a brief summary of publication within thirty days of the date of publication.

59. (1) Each licensee shall adhere to the license conditions through which customers may lodge complaints concerning the services prescribed by the Regulatory Board.

(2) Notwithstanding the generality of paragraph (1), the procedures for lodging complaints shall provide for-

- (a) notification to customers of the right to complain;
- (b) availability of a complaint form or any other written method for raising complaints;
- (c) maintenance of a log of customer complaints.

(3) Each licensee shall file its complaint handling procedures with the Regulatory Board, within sixty days after the grant of licence,

(4) The Regulatory Board shall issue any order or directive to a licensee relating to complaints arising in the license area.

(5) It shall be an offence under the Act for a licensee to fail to adhere to this rule.

60.(1) Any person with a complaint against a licensee related to any matter covered by these Rules shall submit a written complaint to the Regulatory Board providing the details of the nature of complaint.

Complaints to the
Regulatory Board.

(2) The Regulatory Board shall reply to the complainant within twenty one days of receiving the complaint, stating what action is being taken, the position of the Regulatory Board on the matter and any recommendation to the complainant.

(3) If a party is dissatisfied with the decision of the Regulatory Board, he may forward the matter to the Water Appeal Board, and thereafter, if still not satisfied, may apply to the High Court in accordance with section 87 of the Act.

(4) Each complaint shall be given a complainant number by the Regulatory Board which shall be used for purposes of monitoring the response to the complaint.

(5) The Regulatory Board shall keep an annual record indicating the length of time it took to address the various complaints

submitted to it during the year in question or carried over from the previous year.

PART VII-INSPECTIONS AND ENFORCEMENT

61. (1) Each licensee shall ensure that each service provision agreement contains provisions for the suspension or revocation of the service provision agreement.

Suspension or
Revocation of Service
Provision Agreements.

(2) Notwithstanding the provisions of paragraph (1), the Regulatory Board may recommend the suspension or revocation of a service provision agreement in the case of-

- (a) serious or repeated breach of the service provision agreement conditions;
- (b) discovery of any fraud or intentional misrepresentation by an agent at the time of applying for the service provision agreement;
- (c) engagement in or support of unlawful activities by the agent in its operational activities;
- (d) cessation of the agent to be a person who is eligible to hold such an agreement; or
- (e) failure to pay the prescribed fees.

62. (1) Unless provided otherwise in the licence, the Regulatory Board shall give a licensee sixty days written notice of its intention to transfer the licence for any of the following reasons-

Transfer of License.

- (a) serious and or repeated breach of the license conditions;
- (b) discovery of any fraud or intentional misrepresentation by the licensee at the time of applying for the license;
- (c) engagement in or support of unlawful activities by the licensee;
- (d) cessation of the licensee to be a person or entity who is eligible to hold such an agreement; or
- (e) failure to pay the prescribed fees for licensee or other obligation to the Regulatory Board.

(2) The licensee or any interested party may make representations against such transfer to the Regulatory Board.

(3) After due consideration of such representations, the Regulatory Board may-

- (a) prescribe the time during which the licensee may remedy the offending act or conduct; or

(b) require the payment of a penalty or fee as specified in the Act or these Rules.

(4) Where a licensee has not complied with the conditions set by the Regulatory Board in paragraph (3) of this rule, it may-

(a) transfer the licence for a specified period of time to an interim water services board or another established board for a period up to twelve months; or

(b) make variations to the licensed area.

(5) A person aggrieved by the decision of the Regulatory Board under this rule may within fifteen days from the date on which the decision is made appeal to the Water Appeal Board.

63. The Regulatory Board shall establish an enforcement services function within itself which shall-

Water Services
Inspection.

(a) spearhead and coordinate the monitoring and inspections functions in the water services sector by conducting scheduled inspections, spot inspections and post inspections on the licensees;

(b) create and maintain enforcement and inspections checklists for all the different aspects in the water services sector including water and waste water network expansion and maintenance, water and effluent quality surveillance, and finance to ensure continuous improvement;

(c) ensure that all licensees develop and maintain an effective enforcement and inspection function to monitor all aspects of water service operations in their license area;

(d) create terms of reference and codes of conduct for all enforcement officers in the water services;

(e) conduct enforcement inspections at least once quarterly.

64. (1) Subject to paragraph (2) the Regulatory Board may, from time to time, by notice in the Gazette, appoint any person or class of persons to be water services inspectors for the purposes of these Rules.

Appointment of Water
Service Inspection
Officers.

(2) A person appointed as an inspector shall be qualified or trained in law, law enforcement, finance, water and waste water engineering, water quality matters, public health, information technology or any other relevant qualifications.

(3) The Regulatory Board shall issue a certificate of appointment to every person appointed under paragraph (1), and may

in addition require further or additional training for every person so appointed.

(4) Notwithstanding the provisions of this rule, the following persons shall, subject to appointment by the Regulatory Board, be deemed to be enforcement officers for the purposes of these Rules-

- (a) a designated employee of the Regulatory Board or licensee; and
- (b) any other person upon whom written law vests functions of maintenance or enforcement of law and order.

(5) Every person appointed to perform duties and have powers of water services inspector shall carry a document of identification and shall produce it when required in the performance of his duties.

65.(1) An inspector shall have power of entry, inspection and apprehension, during normal working days and hours, for any offence under the Act.

Powers of Inspectors .

(2) An inspector may have prosecutorial powers subject to authority being granted by the Director of Public Prosecution in accordance with the law.

(3) Any person who obstructs or hinders or knowingly makes false or misleading statements to an inspector who is carrying out duties under paragraph (1), commits an offence.

66.(1) If a licensee becomes aware of any circumstances where an agent is in breach of its obligations the licensee shall be entitled to issue a cure notice requesting the concerned agent to cure the remedy or the breach.

Cure Notice.

(2) Where an agent fails to cure the breach and the licensee or a third party cures the breach himself, in each such case the agent shall indemnify the third party or licensee for costs of any such curing of a breach of the agreement within fourteen days or receipt of an invoice of such costs.

(3) Where a third party or the licensee steps in to cure any breach pursuant to a cure notice then he shall immediately on completing such task hand back all the responsibilities to the agent and the agent shall be bound by any such works as though he had either performed them himself or subcontracted the works to a third party.

(4) Where a service provider fails to cure breach within the period stated in the cure notice and the licensee deems that it is not reasonable or practicable or he does not wish to take any action or the agent fails to indemnify the licensee the licensee may terminate the agreement.

67.(1) Where the Regulatory Board establishes that a licensee has failed to discharge its duties as provided for under the license, the Regulatory Board may order the licensee to pay a daily penalty of not less than Kenya shillings two thousand until the non compliance by the licensee is rectified.

Penalties.

(2) Where it appears to the Regulatory Board that a licensee has failed to discharge its duties under section 68 of the Act the Regulatory Board may order the licensee to pay to an aggrieved person a penalty which shall-

- (a) be reasonable in the circumstances of the case;
- (b) set out the conditions, requirements or standard of performance in question;
- (c) specify the acts or omissions which constitute the contravention or failure in question; and
- (d) set out any other facts which justify the imposition of the penalty.

(3) A licensee may, within fourteen days of the date of service on it of a notice under paragraph (4), make an application to the Regulatory Board for it to vary the dates by which different portions of the penalty may be paid.

(4) Any notice required to be given under this rule shall be given by publishing the notice in such manner as the Regulatory Board considers appropriate for the purpose of bringing the matter to which the notice relates to the attention of persons likely to be affected, and by serving a copy of the notice to all affected parties.

(5) The payment of any penalty shall be enforced by way of summary judgment in the event of failure to comply within twenty one days from the date of imposition.

(6) Where the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall accrue interest at commercial rates.

(7) An aggrieved party who appeals to the Water Appeals Board may appeal-

- (a) the imposition of the penalty;
- (b) the amount of the penalty;
- (c) the date by which the penalty is required to be paid; or
- (d) the different dates by which different portions of the penalty are required to be paid.

(2) The Water Appeal Board may-

- (a) quash the penalty;
- (b) substitute a penalty of such lesser or higher amount as it considers appropriate in the circumstances of the case; or
- (c) substitute for the date imposed by the Regulatory Board an alternative date.

(3) A licensee shall be entitled to enforce penalties in the service provision agreement and that penalties shall be in the form of a reduction in the level of service provider income and shall apply for the next following twelve months and may also be shown as a rebate on the customer's bill.

(4) The maximum liability of an agent in any one service provision agreement year shall be limited to ten percent of his income.

68. (1) Where it appears to the Regulatory Board that a licensee or an agent has-

Special Regulatory Measures.

- (a) failed to adhere to the inspection and monitoring programme agreed to without there being mitigating circumstances for that failure;
- (b) failed to keep an updated list of the asset register and failed to notify it to the Regulatory Board;
- (c) failed to adhere to agreed standards of improved services in the water quality, service delivery, facilities maintenance and capital works expansion and rehabilitation;
- (d) failed to follow the approved tariff structure without any mitigating circumstances;
- (e) neglected sound business principles and good governance as stipulated in the minimum service level and has bloated the payroll or incurred huge unsupportable administrative payments;
- (f) merged or mixed the funds and accounts of two separate business entities without proper accounting; or
- (g) sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered a licence, or assets used for the provision of water services without authority, the Regulatory Board shall give a time bound order for the licensee or agent to cure that breach.

(2) The Regulatory Board may, in addition to orders issued under paragraph (1), direct –

- (a) a member of staff of the Regulatory Board or any agent of the Regulatory Board, or a licensee, as the case may be, to sit in the licensee's or agent's board or committee meeting to monitor the implementation of the order and the decisions being made in the licensee or the agent, as the case may be;
- (b) the licensee or the agent transmit weekly reports of billings received and expenditures on operations and transactions to the Regulatory Board or the licensee as the case may be, and bank certificates for all its accounts;
- (c) an official from the Regulatory Board or an agent appointed for that purpose be placed in the concerned licensee or agent to monitor the day to day operations of the licensee or agent and to provide direction and technical assistance to the staff and board of directors of the licensee or agent for any length of time, that is deemed necessary to effect the cure.

(3) Regular inspections shall be conducted at random by the Regulatory Board to ensure that the service provision agreement or the licence is being adhered to and the cure plan is implemented by the concerned licensee or agent as the case may be.

(4) The costs of the special regulatory measures under this rule shall be to the account of the concerned licensee or agent as the case may be.

69. If after six months of the special regulatory measures being undertaken it still appears to the Regulatory Board that a licensee or agent is still unable or unwilling to meet obligations or continues to be in breach of obligations, the Regulatory Board may in addition to the measures above-

- (a) mandate that an agent of the Regulatory Board appointed to enhance financial discipline shall become a mandatory signatory to the accounts of the concerned licensee or agent;
- (b) direct the commencement of disciplinary or other punitive process against key office staff responsible for network expansion and maintenance, billing, meter reading and disconnection or financial matters, subject to their right to be heard, and take steps to integrate the billing system with the financial management system at the cost of the concerned licensee or agent.
- (c) direct the concerned licensee or agent, as the case may be, to take measures to review and rationalize its staff

Removal of Staff and
Replacement of Board
of Directors.

complement to ensure efficiency ratios if the staff size and capacity is contributing to the breach and implement a time plan to execute it;

- (d) direct or recommend to the relevant board or appointing authority the suspension of chief officers of the concerned licensee or agent, as the case may be, on tangible grounds identified, and subject to the concerned chief officers' right to be heard;
- (e) recommend to the Minister the taking of measures against the board of directors of the concerned licensee, or take remedial or punitive measures against the board of directors or management committee of the concerned agent, subject to their right to be heard;
- (f) implement all other recommendations that have emerged from the regular inspections conducted.

70. (1) The special regulatory measures described under rules 68 and 69 shall be-

Costs and Duration.

- (a) for a particular duration, not exceeding six (6) months in the first instance, and subject to extension by a further period not exceeding six months;
- (b) intended to achieve improved results in the licensee and the agent;
- (c) funded from the operations of the concerned licensee and or agent performance guarantee which shall have been issued;
- (d) an integral part of the licence and the service provision agreement.

(2) Where the special regulatory regime fails, the Regulatory Board shall by order effect the transfer of licence as envisaged in section 69 of the Act.

71.(1) The Regulatory Board may delegate to any person the exercise of any of the powers or performance of its function under these Rules.

Delegation by
Regulatory Board.

(2) The person to whom power is delegated under paragraph (1) shall have the power to carry out inspection and enforcement functions of the Regulatory Board, and all other functions except the licensing and prosecutorial function.

(3) All documents made by the order of the Regulatory Board and presented by the official or agent of the Regulatory Board will be received in evidence and will be deemed to be valid without further proof unless the contrary is shown.

(4) A certificate signed by the Regulatory Board and presented by its agent or official shall be conclusive.

72. (1) Where an application for variation of terms and conditions of a licence under section 62(1) of the Act is made, the licensee shall make such application in a prescribed form.

Variation of Terms and Conditions of Licence.

(2) The Regulatory Board shall notify the licensee of the outcome within thirty days from the date of receiving the application, failing which the variation of terms and conditions of license will be deemed to have been approved as per the licensee's application and the same will take effect from the 31st day from the day on which the application was received by the Regulatory Board.

(3) Variation of terms and conditions under the Act may be made without prior public consultation.

73.(1) The applications referred to in rules 4 and 34 shall be subject to public consultation before an application is sent to the Regulatory Board for approval-

Public Consultation.

(2) The applicant under paragraph (1) shall be expected to –

- (a) ensure that appropriate notices are set out at 30 days prior to the meetings through public notification, stating the venue and time, which shall be convenient to the persons concerned;
- (b) ensure that at least one public meeting is held with affected parties and communities;
- (c) Ensure all comments received, orally or in writing, are compiled into a report for onward transmission to the Regulatory Board together with the application.

(3) Public notification shall consist of publication in the Kenya Gazette, and at least one announcement in a national newspaper in circulation in the locality of the designated person or at least an announcement in the radio broadcasting in the locality of the designated person.

74.(1) A licensee wishing to provide water services outside its limits of supply under section 65 of the Act shall make an application to the Regulatory Board in the form prescribed by the Regulatory Board.

Supply outside Limits of Supply.

(2) The Regulatory Board shall determine whether or not to grant the application under paragraph (1).

(3) In determining the application by a licensee made under paragraph (1), the Regulatory Board shall consider -

- (a) the views of the licensee authorized to supply services in the affected area;

- (b) the consent or opinion of the local community within whose jurisdiction the area of supply is situated;
- (c) the capacity of both the applicant and the authorized licensee to meet the objectives of the sector to provide access to cost effective, efficient and adequate services;
- (d) any other criteria that may be determined by the Regulatory Board from time to time.

(3) The supplying licensee may be subjected to the same terms and conditions, rights and obligations as the licensee for the particular area of supply or new conditions as the Regulatory Board may deem fit.

(4) Where the supplying licensee fails to comply with the conditions set under paragraph (4), the Regulatory Board may revoke or cancel its license to supply outside its own area of supply.

75. (1) A public notice by a licensee issued under section 72 (2) of the Act to prohibit or restrict the use of water may require-

Prohibition or restriction on use of water.

- (a) Prohibition or restriction on certain water use activities;
- (b) Prohibition or restriction on certain works to be undertaken;
- (c) Prohibition of certain vegetation along the sources of water the licensee has been authorised to abstract water.
- (d) Such other measures as the licensee may consider necessary in avoiding water wastage or protecting its infrastructure.

(2) If a person to whom such a notice under this rule is directed fails to comply with the notice, such a person shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and term of imprisonment.

(3) A person who, without lawful authority, hinders or obstructs any person acting in execution of a notice under this rule, shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred thousand shillings.

PART VIII-REGULATION OF INSTALLATION WORK

76. The Director shall have the power to-

Installation work in the licensee area.

- (a) issue, vary, suspend or cancel licenses for engineers and contractors in accordance with these Rules;

- (b) inquire into and to resolve complaints against licensed engineers and contractors in the course of installation work.

77. (1) The Director shall have power-

Issuing of licences.

- (a) to issue, vary, suspend or cancel licences for water service engineers and contractors in accordance with these Rules.
- (b) to inquire into and resolve complaints against licensed water service engineers and contractors.

(2) The Director may in writing delegate such of its powers and duties under these Rules as it shall specify to one or more persons, who shall be issuing officers.

(3) No issuing officer shall be personally liable for any act or default done or omitted to be done in good faith in pursuance of these Rules.

78.(1) The Director may, on application, grant to the applicant one of the following classes of licences-

Categories of Licences.

- (a) Class C-2, which shall entitle the holder to carry out water service installation work for connection to a service pipe, restricted to up to two storey residential and commercial buildings not used as factories or places of public entertainment;
- (b) Class C-1, which shall entitle the holder to carry out water service installation work as in Class C-2, and for connection to service pipes to up to four storey buildings not used as factories or places of public entertainment;
- (c) Class B, which shall entitle the holder to carry out water service installation work as in Class C-1, but without limitation as to number of storeys in the buildings and whether used as factories or places of public entertainment or otherwise, and for connection to supply metered.
 - (a) Class A-1, which shall entitle the holder to carry out all kinds of water service installation work;
 - (b) Class A-2, which shall entitle the holder to carry out specialized water service installation work.

(2) An application for a licence under rule 77 and this rule shall be made to the Director in Form 1 set out in the Schedule, and such application shall specify the class of licence in respect of which the application is made and shall be accompanied by the application fees set out in Schedule.

(3) The applicant shall furnish to the Director such evidence or particulars as may be required by the Director relating to the applicant's previous experience of water service installation work.

(4) The Director may require and cause such applicant, for the purpose of ascertaining his ability to undertake, engage in or perform water service installation work, to be examined, in such manner as it may determine, upon any matter or thing in connection with his application and upon the Act and any rules made there under.

79.(1) The Director may grant the applicant such type of licence as in his opinion he is qualified to hold, and the Director may refuse to grant any licence to any applicant, setting out in writing reasons therefore.

License Grant or
Denial, Fees, Renewal.

(2) The fees in Schedule 5 shall be paid on the granting of the corresponding class of licence.

(3) The fees in Schedule shall be paid for a renewal of any class of licence on or before the 31st March in each year.

(4) The Director shall maintain a register of all licensed water service engineers for the time being licensed under these Rules.

(5) Any licence issued under paragraph (1) which is not renewed for two consecutive years shall, unless the licence holder has before expiry of the licence informed the Regulatory Board in writing of his intention and reasons not to renew the licence, be deemed to have been cancelled and shall not be considered for renewal.

80.(1) No person shall carry out any water service installation work unless he is registered by the Director as a water service contractor.

Registration of Water
Service Installation
Works Contractors.

(2) To be registered as a water service contractor a person must be a licensed engineer or have in his employ, a licensed engineer.

(3) An application for the registration of water service contractor shall be made to the Director in the prescribed form, and such application shall specify the class of licence in respect of which the application is made and shall, depending on the class of licence applied for, be accompanied by the application fees set in Schedule.

(4) The registration fees set out in Schedule shall be paid by every water service contractor whose application for registration is approved by the Director depending on the type of licence he holds.

(5) Subject to paragraph (8), every registration shall remain in force until 31st December in the year in which it is granted and may, subject to such conditions as may be specified by the Director, be renewed.

(6) The renewal fees set out in Schedule shall be paid by every water service contractor depending on the type of licence he holds. Provided that for any registration for registration renewed after the 31st March, the fees specified in this paragraph for renewal shall be one and half times the fees specified in this paragraph.

(7) The Director shall maintain a register of all water service contractors and their business names and, in the case of a business having more than one branch, separate registration shall be effected in respect of each branch.

(8) The Regulatory Board shall not register any water service contractor who is unable to satisfy it that he carries on a business at premises constituting a permanent address.

(9) The registration of any business or branch thereof shall become void upon the expiration of thirty days from the date of any change in the ownership of such business or branch, or upon the business or branch being transferred from the premises in respect of which it is registered:

Provided that where any issuing officer in writing, a copy of which shall forthwith be sent to the Director, approves such change of ownership or transfer from premises, the registration shall not become void until the next meeting of the Directorate for the purpose of considering such approval.

81.(1) A water service contractor undertaking any water service installation work shall submit a commencement notice in the prescribed form to a public water service supplier delivering the supply or to the licensee where the supply is not delivered by a public water service supplier.

Commencement notice and completion certificate.

(2) An authorized engineer or the water service contractor, as the case may be, completing or directing the completion of the water service installation work shall submit a completion certificate to a public water service supplier delivering the supply or to the licensee where the supply is not delivered by a public water service supplier.

(3) Notwithstanding paragraphs (1) and (2), the commencement notice and the completion certificate for water service installation work shall be submitted by the same water service contractor unless a special permission is granted by the Regulatory Board.

(4) Any person who fails to comply with this rule shall be guilty of an offence and liable to such punishment as provided for in rule 84.

(5) Any person who submits or causes to be submitted to a public water service supplier or to the Regulatory Board a completion certificate which he knows or has reason to believe is false in any material particular shall be guilty of an offence and liable to such punishment as provided for in rule 84.

82. (1) The Director may in his absolute discretion refuse to register or may vary, suspend or cancel the registration of any business or branch of a business unless he is satisfied that there is and shall continue to be employed in the business or branch on a full time basis, an engineer who holds a licence appropriate to the water service installation work proposed to be undertaken by such business or branch and who is and shall continue to be available to direct all such work.

Refusal of
Registration,
Variation, Suspension
or Revocation.

(2) An issuing officer may at any time by giving notice in writing to a water service contractor, a copy of which shall forthwith be sent to the Regulatory Board, suspend the registration of the business of such water service contractor or of a branch thereof until the next meeting of the Regulatory Board for the purpose of considering such matters.

(3) Any water service contractor who-

- (a) undertakes or carries out by himself, his servant, or agent any water service installation work at any time whilst his business or any branch thereof is not registered or while the registration of such business or branch is suspended;
- (b) undertakes or carries out, by himself, his servant or agent any water service installation work except under the direction of a licensed engineer holding a licence of a type appropriate to such work, shall be guilty of an offence and liable to such punishment as provided in rule 84.

(4) Any owner or occupant of any premises or any developer or main contractor of any premises under construction who causes or permits to be carried out upon the premises any water service installation work in contravention of these Rules shall be guilty of an offence and liable to such punishment as provided for in rule 84.

(5) Any person who contravenes or fails to comply with any of the terms and conditions of any licence issued under these Rules or wilfully gives false or misleading information under or for the purposes of these Rules shall be guilty of an offence and liable to such punishment as provided in rule 84.

(6) Any person who undertakes or carries out any water service installation work without being the holder of a licence then in force appropriate to the work undertaken or carried out or without being under the direction of such a licence holder shall be guilty of an offence and liable to such punishment as provided in rule 84.

83. (1) The Director may vary, suspend or revoke the licence of any licensed water service engineer upon being satisfied that the licensed water service engineer has contravened any of the provisions of these Rules. Any variation or suspension of license shall be for a specific period, not exceeding thirty six (36) months, to be stated by order of the Director.

Measures against
Errant Licensed Water
Service Engineer.

(2) Where the Director suspends or cancels the licence of any licensed water service engineer it shall remove his name from the register of licensed water service engineers for the time being licensed under these Rules.

(3) Upon the variation, suspension or cancellation of the licence of any licensed water service engineer under paragraph (1), the Director may by written notice to such licensed water service engineer, disqualify him from holding a licence or a particular type of licence for such period as the Board deems fit.

(4) Before exercising his powers under paragraph (1), the Director shall by notice in writing afford the licensed water service engineer whose licence it is proposed to vary, suspend or cancel an opportunity of appearing or being represented before the Director to show cause why the Director should not exercise his power under these Rules.

(5) Every licence shall, unless previously suspended or revoked under paragraph (1) remain in force until the 31st December, in the year in which it is granted and shall not be transferable but may subject to such conditions as may be specified by the Regulatory Board, be renewed.

84. (1) A person-

Offences.

- (a) who undertakes or carries out any water service installation work without being the holder of a licence then in force appropriate to the work undertaken or carried out or without being under the direction of a suitably licensed water service engineer;
- (b) who contravenes or fails to comply with any of the terms and conditions of any water service installation licence granted under these Rules or wilfully gives false or misleading information in relation to water service installation work;
- (c) who submits or causes to be submitted to a public water service provider or to the Regulatory Board a completion certificate which he knows or has reason to believe is false in any material particular;
- (d) who, being a water service contractor, undertakes or carries out by himself, his servant, or agent any water service installation work at any time whilst his business or any branch thereof is not registered or while the registration of such business or branch is suspended or cancelled;
- (e) who, being a water service contractor, undertakes or carries out, by himself, his servant or agent any water service installation work except under the direction of

a licensed engineer holding a licence of a type appropriate to such work; or installs a pump on a service line, or

- (f) who, being an owner or occupant of any premises or any developer or main contractor of any premises under construction, who causes or permits to be carried out upon the premises any water service installation work in contravention of these Rules,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months or both.

(2) Any person who contravenes or fails to comply with any of these Rules or fails to comply with any prohibition or order of the Board under any of these Rules shall, where no specific punishment is prescribed under paragraph (1), commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months or both.

(3) Where an offence under these Rules committed by a company, co-operative society or other corporate body is proved to have been committed with the consent or connivance of, or to have been facilitated by any director, chairman, manager, secretary or other officer thereof, he, as well as the company, co-operative society or other corporate body shall be guilty of the offence and liable to be prosecuted against and punished accordingly.

(4) Any person aggrieved by any decision of the Director, Regulatory Board or other authorised person may within thirty days appeal to the Water Appeal Board.

(5) In cases where the Government is the appellant, the appeal shall be made to the High Court.

85. (1) No person shall cause a water fitting to communicate with any pipe, cistern or other receptacle or works used, or capable of being used, for the conveyance or reception of water other than water supplied by a licensee or its agents.

Allowing of New
Water Fitting.

(2) An agent shall ensure that a customer shall provide at his standpipe or water kiosk a concrete basin and, for the disposal of all waste water from the connection, such soak away pit or drain as required by a licensee or a public health officer.

(3) An agent shall not allow the turn on a supply of water *until* such works have been completed and approved by him and the medical officer of health.

(4) No newly laid pipe or other water fitting shall, in the course of installation or alteration by any person other than a licensee, be covered until such pipe or water fitting has been examined and approved by such licensee or other person authorized by him.

(5) No pipe or other water fitting shall be connected with a main, and no additional water fittings, except taps replacing old taps, shall be connected with existing water fittings, until they have been inspected by the licensee or his agent giving the supply and a certificate of approval given by him.

(6) The licensee shall ensure and enforce the regulations of installation work in the licensed area as a condition of the license.

PART IX-WATER CONSERVATION MEASURES

86. A licensee shall take measures to-

Conservation of
Water.

- (a) prevent any substance other than uncontaminated storm water to enter any storm drain in its licensed area;
- (b) in collaboration with the concerned local authorities, prevent storm water from entering its sewerage system;
- (c) develop and implement a water conservation plan for the license area in consultation with other public agencies with corresponding mandates;
- (d) designate, as part of its water conservation plan, water resource protection zones in the license area;
- (e) develop and implement water saving techniques in the license area;
- (f) develop and promote water storage and rain water harvesting in the license area and where feasible charge other water users such irrigators, hydroelectric power producers and the like;
- (g) ensure its agents belong to water resources users associations.

87. (1) A licensee must include a suitable programme as prescribed by the Regulatory Board for sampling the quality of potable water provided by it to its customers in its business plan.

Sampling Programme.

(2) The water quality sampling programme must specify the points at which potable water provided to customers will be sampled, the frequency of sampling and for which substances and determinants the water will be tested.

(3) A licensee shall compare the results obtained from the testing of the samples with standards as established or approved from time to time by the Kenya Bureau of Standards.

(4) Should the comparison of the results as contemplated in 3 above indicate that the water supplied poses a health risk the concerned licensee shall inform the Regulatory Board and the local

officer in charge of public health and it shall also take steps to inform customers –

- (a) that the quality of water it supplies poses a health risk;
- (b) of the reasons of the health risk;
- (c) of any precautions to be taken by customers; and
- (d) of the time frame, if any, within which it may be expected that water of a safe quality will be provided;
- (e) That sampling records shall be kept for a period of not less than three years and the same shall be available on request by any customer.

(2) It shall be an offence should the licensee fail to comply with this rule.

88.(1) A licensee shall ensure that the use of effluent for any purpose does not pose a health risk before approving that use.

Use of Effluent.

(2) Any tap or point of access through which effluent or non potable water can be accessed must be clearly marked with a durable notice and signs indicating that effluent or the non potable water is a public health risk.

(3) A licensee shall only be obliged to accept the quality and quantity of industrial effluent of any other substance into a sewerage system that the sewerage treatment plant linked to that system is capable of purifying or treating to ensure that any discharge complies with any standards prescribed by Water Resources Management Authority. In this regard, the licensee may, in collaboration with the National Environment Management Authority, inspect pre treatment facilities handling industrial effluents.

(4) A licensee may, in collaboration with National Environment Management Authority, enter into appropriate agreements with industries discharging industrial effluents concerning standards or quality and quantities of industrial effluents discharged into the sewerage system.

(5) It shall be an offence to discharge industrial effluents beyond the standards or quality or quantities prescribed, and the penalty thereof shall be a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months or both such fine and term of imprisonment.

89. (1) A licensee shall ensure as part of its license conditions that every month-

Water and Effluent
Balance Analysis and
Determination of
Water Losses.

- (a) it measures the quantity of water provided to each supply zone within its license area;

- (b) it determines the quantity of unaccounted for water by comparing the measured quantity of water provided to each supply zone with the total measured quantity of water provided to all used connections within that supply zone;
- (c) it measures the quantity of effluent received at each sewage treatment plant;
- (d) It determines the quantity of water supplied but not discharged to sewage treatment plants by comparing the measured quantity of effluent received at sewage treatment plants with the total measured quantity of water provided to all user connections.

(3) The Regulatory Board shall ensure that every license issued

- (a) has targets set to reduce the quantity of unaccounted water;
- (b) has a reporting system of the record of quantities of water and effluent produced measured and the balance calculations made.

90. (1) As part of its license conditions a licensee shall ensure that within its license area any major, visible or reported leaks in its water services system is repaired within 48 hours of becoming aware thereof.

Repair of Leaks.

(2) A licensee shall maintain and publish in the media a service to which reports of leakages can be made by customers.

91. (1) Each licensee shall include a water services audit in its annual report on the implementation of its water services business plan.

Water Services Audit as Part of the Business Plan.

(2) Each licensee shall provide in its regulations for the details required for a water services audit.

(3) The Regulatory Board, in consultation with the Director, shall develop criteria and on that basis pre qualify and register eligible water services auditors.

(4) The Regulatory Board shall review the register of pre-qualified water services auditors annually and avail the same to each licensee and its agents.

PART X-GENERAL PROVISIONS

92. Each licensee shall, within one year after the issue of a license, or where a licensee has a valid license, within one year from the effective date, establish regulations under section 73 of the Act to regulate the operations of water services in its area.

Regulations.

93. A person who commits an offence under these rules for which no express penalty is provided shall on conviction be liable to imprisonment for a term not exceeding twelve months or a fine of one hundred thousand shillings or to both such term of imprisonment and fine.

General Offences and
Penalty.

94. The water undertaker rules under the repealed Water Act Chapter 372 of the Water Act are repealed by these Rules.

Revocation.

FIRST SCHEDULE

FORMS

Rule 4- License Application Form

Water Services Regulatory Board



Form 1a: Call for application for licence –
Details

Applicant

1. NAME OF APPLICANT

The name of the Water Services Board should be stated in full

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2. CONTACT DETAILS OF THE APPLICANT

Name of contact person:.....

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Physical and postal address of main offices:

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Telephone/Fax of contact person:.....

Email address of contact person:.....

should be available for correspondence with the WSRB

3. APPLICANT’S PROFILE

Legal status and Statutes of the applicant:

A copy of documents related to the establishment of the applicant and its statutes to be included

Details of board members:

Name and profession of board members starting with the chairman of the board

Name	Academic Qualification	Professional qualifications	Current occupation	Age and sex

List details of key executive staff:

The list should include the CEO, all directors and senior managers

Name	Position within Organisation	Academic Qualifications	Professional Qualifications	Age and sex

You may attach additional separate sheet

List staffing details:

The applicant shall list all staff and indicate their terms of service such as contract period, professionals or support staff.

Name	Title	Position within organisation	Academic Qualifications	Professional qualification	Age and sex

You may attach additional separate sheet

Organisation chart of the organisation:

Either to be outlined below or a copy to be included in the supporting documents.

4. WATER SERVICE PROVISION IN APPLICANT’S SERVICE AREA

List all agents:

The applicant shall list all water schemes within the WSB/ licensee’s boundaries which are defined as Agents under the Water Act 2002 (section 56); provide a map of the boundaries of each service provider in the supporting documents; provide a copy of any existing written agreements between the Agents and the Water Service Boards in the supporting documents

Name of Agent	Type of water service operation *	Current owner	Operator	Any agreements (Y/N)**

*e.g. local government department, Ministry, community, commercialised utility, NWCP

** e.g. lease agreements between Local Authority and WSB or between WSB and WSP or Tripartite (to be provided in the supporting documents)

Small scale service providers ***

The applicant shall describe the situation with regard to small scale service providers with regard to the registration process (if any), the source of water supply and the charges to the customers per 20, 220 litres containers or 5, 7, 10, 15 tankers

*** *Define Type*

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Overview on technical data for entire service area

*The applicant shall list all relevant technical data on the entire service area as requested in the technical data sheet provided by the WSRB*****

*****Provide in excel sheet format as, Form 1c (WSB)*

Overview on financial/commercial data for entire service area

*The applicant shall insert commercial/financial data about the entire service area as requested in the ‘commercial and financial data’ sheet provided by the WASREB*****

*****Provide in excel sheet format as , Form 1c (WSB)*

Thus including:

- *Basic commercial and financial status*
- *Statement of Accounts*
- *3 years future Projections*

5. INDIVIDUAL AGENTS

The applicant should provide detailed information on each of the agents within its area of jurisdiction as listed on this form. For the requested information see form 1b.

6. FUTURE STRATEGY

The licence shall not be granted unless the Water Services Regulatory Board is satisfied that the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable service. For this reason the applicant is required to demonstrate a strategy for future service provision requirements within its area of jurisdiction of service provision. Furthermore, the applicant needs to describe in what way and by what means the strategy will be implemented.

Performance improvements

The WSB shall provide the regulator with a definition of its potential to improve its performance in relation to the following areas:

- Service quality.....
- Water quality;
- Efficiency.....
- Water Coverage %

In doing so, WSB shall first, set out - and to the extent possible - quantify the potential improvements in each of these areas (e.g. response time to customer complaints reduced by x%, unaccounted for water by x%, increase in collection rate to x% and so on). Second, the WSB shall provide evidence on which the improvement potential is based (e.g. investment plan see below). Third, it should set out the implication of these improvements on cost of service.

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Investment plan

Based on the existing investment plan on the national level the applicant shall come with a more detailed investment plan for its region. The plan shall contain the following elements:

- an analysis of the existing situation and identification of investment needs (taking into account the proposed performance improvements) for the next 5, 10, 15, 20 years;
- a forecast on supply and demand for the next 5, 10, 15, 20 years;
- a description of the investment strategy and the definition of priorities based on sound (financial, technical and socio-economic) criteria;
- sources of financing;

- *Demonstrate sources of raw water*
- *an environmental and socio-economic impact assessment*

(Attach separate sheet)

Socio-economic aspects

The applicant is to set out how it intends to achieve the government's objective to increase access to water services to the most vulnerable households. To this effect, the applicant needs to demonstrate an understanding of the capability of the vulnerable group such as those living in informal settlements, ASALs, Flood prone areas and those living below the poverty level (i.e below one US Dollar a day)

The applicant has to demonstrate that impact on any of the proposed strategies on the situation of women. He shall also propose a strategy how the specific interests of women are actively taken into account in the proposed strategy.

Furthermore, the applicant shall demonstrate that HIV/AIDS? is taken into account.

(Attach separate sheet)

Financial projections

The WSB should provide a financial forecast for the sector for at least the next three years. It is desirable to choose a period of up to 10 years for financial forecasting. The financial projections shall reflect the applicant's proposals regarding performance improvements, investment and socio-economic policies aspect for the next 5, 10, 15, 20 years.

The forecast shall include a proposal for an average level and structure of tariffs. If cost recovery tariffs are not achieved at the time of submission, the applicant is requested to propose an economically sound and socially acceptable plan for tariff adjustments over the next period.

The tariffs should be socio-economically accepted (i.e. sensitive to socio-economic activities).

(Attach separate sheet)

Details on shareholders where the company is registered under Company's Act:

Name of shareholder organisation	Number of shares (in %)	Voting rights (full/limited/none)	Shareholders agreement available (Y/N)

Legal documents establishing the company where the company is registered under the Company's Act

The applicant is to provide all relevant documents with regards to the establishment of the company, statutes, the shareholders agreements and any other as part of the supporting documents.

(Attach copies)

Details of key executive staff:

The list should include the CEO, all directors and senior managers

Name	Academic Qualifications	Professional qualifications	Age and sex

Information on professional and support staff

The applicant should provide the number of professional/support staff of the WSP and to the extent available, details on the position of staff within the organisation, title, grade, academic background and age. The information can either be provided below or in the supporting documents)

Name	Academic Qualifications	Professional qualifications	Age and sex

2. INFORMATION ON MANAGEMENT

Information on human resource management:

The applicant shall provide information on human resource management including human resource policy, career development schemes, past training measures, recruitment procedures, future training plan and identification of training needs, dealing with HIV, equal opportunity for women.

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Information on commercial management: customer awareness, communications and pro-poor policies:

The applicant shall give an overview on commercial management practices and customer issues including the availability of socio-economic data, public opinion survey, customer complaints procedures, public relation management, and policy with vulnerable groups, disconnection and illegal connections and so on.

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Information on accounting:

The applicant shall describe the WSP’s accounting scheme including the use of accounting and reporting standards, use of management information systems, methodology for depreciation, policy regarding write-off of bad debts, budgeting and investment processes including responsibilities and procurement of spare parts and investments.

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Information on financial and asset management: budgeting, investment planning and procurement process

The applicant shall describe the WSP’s budgeting process e.g. availability of long-term projections and investment processes including responsibilities and procurement of spare parts and investments.

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Information on operation of water and sewerage facilities

The applicant shall describe the operational processes including the recording of processes, collection and analysis of operational data, use of automated systems, routine and preventive maintenance measures

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3. INFORMATION ON PERFORMANCE

Information on technical and financial performance

The applicant shall insert all requested data in the excel sheet provided in the application package

SECOND SCHEDULE

(r.5)

FEES

1. License application fee Kshs 100,000
2. Service Provision Agreement application fee
 - a. Small Kshs 75,000
 - b. Medium Kshs 75,000
 - c. Large Very Large Kshs 100,000
 - d. Very Large Kshs 100,000