

EXECUTIVE OFFICE OF THE PRESIDENT  
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address  
Telephone: +254-20-227436  
When replying please quote

STATE HOUSE  
P.O. Box 40530-00100  
Nairobi, Kenya

Ref. No. **OP/CAB.9/1A**  
and date

**April 3, 2023**, 20.....

**The Attorney General**

**All Cabinet Secretaries**

**All Principal Secretaries**

**RE: SEPARATION OF ROLES BETWEEN BOARDS OF  
DIRECTORS AND MANAGEMENT OF STATE CORPORATIONS  
AND AGENCIES**

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The Mwongozo Code of Governance for State Corporations, which forms the guiding policy framework for the governance of state corporations and agencies, provides at clause 1.22, that the role of the Board should clearly be separated from that of the management. This principle of separation of roles is well established, as the board's main responsibility is to monitor the operations of the corporation, by providing policy, strategy and oversight, and by ensuring that it is being run in conjunction with its mandate, and the will of the shareholders.

Further, clause 3 of the letters of appointment of chairpersons and members, includes a specific provision on separation of powers. It requires appointees to "*observe the principles of separation of powers...ensure that the role of the Board remains that of policy formulation, directing and monitoring, and that of the Chief Executive will be policy implementation and management of day-to-day affairs of the Corporation, with engagement with management only being undertaken through the office of the Chief Executive Officer*" (copies of issued templates attached for reference).

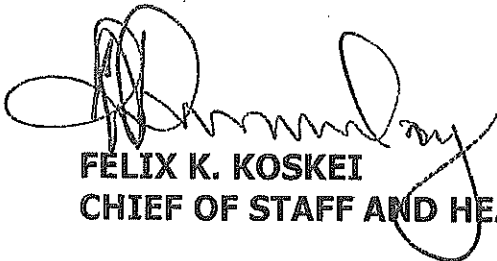
This office has received information to the effect that some Boards of Directors are unduly performing executive functions. These include engagement in internal management controls and operations, assignment

and deployment of staff, and routine project inspections. We have also noted an enhanced demand for elaborate facilitation including offices, vehicles, and equipment outside of approved provision, despite the part time status of these positions.

Boards of Directors are expected to adhere to the prescriptions of the Mwongozo, and specifically as relates to separation of powers. Board Chairpersons in particular, must refrain from engaging in day-to-day operations of the corporation, and direct their members accordingly. The Board is expected to have in place necessary mechanisms for the management to report on executive actions for purposes of oversight, including the use of the internal audit function.

To secure compliance, Principal Secretaries are directed to bring this matter as a substantive agenda item in the next scheduled Board Meeting of their respective state corporations, and report back on the resolutions adopted thereto.

Separately, and with specific reference to Circular Nos. OP/CAB.9/1A dated 25<sup>th</sup> November 2022 and 1<sup>st</sup> February 2023 respectively, on the Guidelines for appointment of Chairpersons, Members and Chief Executive Officers of State Corporations (copies attached), Ministries and State Corporations are reminded to **strictly adhere to the directive to seek this office's concurrence prior to appointment/re-appointment of Chief Executive Officers**. By a copy of this letter, Board Chairpersons are required to take note and secure compliance thereof.



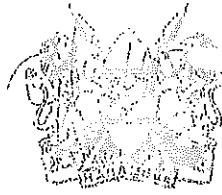
**FELIX K. KOSKEI**  
**CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE**

**Copy to: Mr. George N. Mogyo, EBS**  
Chief of Staff  
Office of the Deputy President  
**NAIROBI**

**Mr. Joseph Busiega**  
Chief of Staff  
Office of the Prime Cabinet Secretary  
**NAIROBI**

**Chairpersons of State Corporations**

**Chief Executive Officers/Accounting Officers of  
State Corporations**



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Ref. No. OP/CAB.9/1A  
and date

February 1, 2023, 20.....

**All Cabinet Secretaries**

**RE: APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICERS  
AND ALTERNATE REPRESENTATIVES TO BOARDS OF  
STATE CORPORATIONS**

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Reference is made to circulars nos. OP/SCAC.9/73A (96) of 5<sup>th</sup> August 2016 and Part F(2)(i)(a) and (b) of Circular No. OP/CAB.9/1A dated 11<sup>th</sup> March 2020 on appointment of Acting Chief Executive Officers (copies attached for ease of reference). The guidance therein identified anomalies in the appointment of acting CEO appointments, including the appointment of officers from outside of the specific state corporation and issued directives on the protocols to be adopted in the proper filling thereof.

For the avoidance of doubt, where a vacancy exists in the office of the Chief Executive Officer arising from criminal prosecution, retirement, resignation, end of term and other circumstances:

- a) An Acting Chief Executive Officer is to be appointed by the Board in consultation with the parent Ministry **within 7 days thereof;**
- b) Where a Board is unable to source an acting replacement from within the agency, the Chairperson shall consult the respective Cabinet Secretary to select a suitable officer from the line ministry staff, who shall be seconded, and appointed by the Board or as specified in enabling legislation.
- c) For the avoidance of doubt, non-public officers, and employees of other state corporations are not to be considered in this regard.
- d) It is not expected that the Ministry would lack suitable senior officers to second to the state corporation on an interim basis. However, in the event that the Ministry is similarly unable to secure competent staff as above, the respective Cabinet Secretary should refer the matter to this office for guidance.

- e) The Boards of the State Corporations should subsequently hasten the process of recruitment of a substantive Chief Executive Officer, as guided in circular no. OP/CAB.9/1A dated 11<sup>th</sup> March 2020 (Part F2(c), (d) and (e).
- f) Boards of State Corporations must begin building the practice of identifying and selecting talent to succeed incumbents in the corporations critical roles, and oversee the development of a diverse pipeline for succession.

It has further been noted that advisors and personal assistants are being designated to sit on Boards of State Corporations as alternate directors representing the Ministry. Principal Secretaries, being the principal members of the Boards are required to attend critical board meetings in person. In exceptional cases, the principal member may designate a head of administration, or relevant technical department to act as their alternate, as they are familiar with the ministerial policies and programmes, as well as overall government guidelines, practices and procedures. This will guarantee business continuity and the effective operation of Boards. Consequently, advisors and personal assistants to Cabinet and Principal Secretaries, should not be assigned to serve as alternate directors.

As earlier guided, alternate directors must brief their principals on critical matters under consideration by the respective Boards, and secure the appropriate guidance to expedite decision making, and assure policy compliance.



**FELIX K. KOSKEI**  
**CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE**

**Copy to: Hon. Musalia Mudavadi, EGH**  
**Prime Cabinet Secretary**  
**Office of the Prime Cabinet Secretary**  
**NAIROBI**

**All Principal Secretaries**



THE PRESIDENCY  
EXECUTIVE OFFICE OF THE PRESIDENT  
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

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STATE HOUSE  
P.O. Box 40530-00  
Nairobi, K.

Ref No **OP/SCAC:9/73A (96)**  
and date

5<sup>th</sup> August, 20..

Board Chairpersons  
State Corporations

**ACTING APPOINTMENTS FOR POSTS OF CHIEF EXECUTIVE OFFICERS**

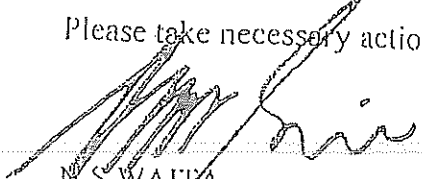
Concerns have arisen on the manner in which Appointments are made temporarily fill vacancies of Chief Executive Officers whenever such vacancies arise. Various anomalies have been noted including:-

- i) Officers being appointed from outside the specific State Corporations
- ii) Boards assigning remuneration packages to such appointed officers with reference to SCAC and the Parent Ministry in terms of section 5 (3) of the State Corporations Act, Cap 446.
- iii) Due regard not being given to the competencies of the appointed persons vis a vis the person specifications stipulated for the post.
- iv) The period of acting appointment is not capped.

As you are aware stewardship of a State Corporation requires much skill and therefore appointments to the office of Chief Executive Officer, albeit temporarily cannot be left to chance. Accordingly, it is now required that Boards be firm in charge of making any respective Acting appointments while ensuring that:-

- a) the appointed staff meet all the requirements for substantive filling of the post.
- b) the terms of service for any such Acting appointments are approved by the Cabinet Secretary (of the Ministry responsible) in consultation with SCAC in terms of section 5 (3) of the Act.
- c) Once a person is appointed in an acting capacity measures should be taken immediately to fill the position within six (6) months.

Please take necessary action.



W.S. WAIYA  
DEPUTY CHIEF OF STAFF AND  
DEPUTY TO HEAD OF THE PUBLIC SERVICE

CC: All Cabinet Secretaries

Mr. Joseph K. Kinyua, EGH  
Chief of Staff and Head of the Public Service  
Executive Office of the President  
NAIROBI.

Prof. Margaret Kobia, CBS  
Chairperson  
Public Service Commission  
NAIROBI.

Mrs. Jane Mugambi, OGW  
Secretary  
State Corporations Advisory Committee  
NAIROBI.

Mr. Titus Muriithi  
Inspector General (Corporations)  
Harambee Annex  
NAIROBI.



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Ref. No. ....  
**QR/CAB.9/1A**

....., 20.....  
**November 25, 2022**

**All Cabinet Secretaries**

**RE: GUIDELINES ON THE PROCEDURE FOR  
APPOINTMENT OF CHAIRPERSONS, BOARD MEMBERS  
AND CHIEF EXECUTIVE OFFICERS OF STATE  
CORPORATIONS AND OTHER BODIES**

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Reference is made to the various circulars on appointment of Chairpersons, Board Members and Chief Executive Officers of State Corporations, copies annexed hereto for information and ease of reference.

The purpose of this circular is to bring the same to your attention, and reiterate the contents thereof, emphasizing that:

1. The appointment of Chairpersons, Board Members and Chief Executive Officers of State Corporations and autonomous bodies must receive the express approval of this office prior to gazettment and/or appointment. This is to assure that candidates are suitably vetted, while also securing alignment with constitutional tenets on diversity. The Government Printer shall only gazette appointments upon receipt of express approval from this office.
2. All board appointments should be effected via gazette notice, for the purpose of public information. Gazettment of Chief Executive Officer positions may only be necessary if expressly required by law, however copies of appointment letters/contracts should be copied to the Prime Cabinet Secretary and this office for noting.
3. The identification and selection of Board Members should take into consideration the skills mix and experience necessary to provide policy, technical and operational guidance to the respective State Corporation. Professionalization of the Board is

to be strictly enforced. The following skill sets should be incorporated in the selection criteria:

- a. Accounting/Audit
- b. Legal/Governance
- c. Human Resource
- d. Subject matter expertise in the State Corporation's core mandate
- e. Constitutional tenets on diversity

Board Members will be expected to subscribe to an Accountability Pledge upon appointment (appointment letter template annexed hereto)

4. Cabinet Secretaries must ensure that they do not appoint public officers to serve as independent members unless the enabling law provides for the same.
5. Alternate Directors representing Principal Secretaries or the Attorney General on state corporation boards must be appointed on the basis of ethics and integrity, subject matter expertise, knowledge and experience of ministerial policy, serving in JG P and above (unless exempted). Alternate Directors will not require gazettement where they represent the principal member, however, regular transfers of representatives should be effected to manage potential risks of prolonged stay (appointment letter template annexed hereto)
6. Principal Secretaries will be required to attend select boards/select board business, in person, for the purpose of assuring government priority objectives.
7. Renewal of Board Membership will be subject to board performance evaluation outcomes, cross-referenced against overall institutional performance.

You are requested to take note of the same for action.

  
**FELIX K. KOSKEI**  
**CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE**



Copy to: **All Principal Secretaries**

**The Government Printer**  
Ministry of Interior and National Administration  
**NAIROBI**

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