

LAWS OF KENYA

The Kenya Tourist Development Corporation Act

CHAPTER 382

**Revised Edition 1988 (1967)
Printed and Published by the Government Printer
Nairobi**

CHAPTER 382

**THE KENYA TOURIST DEVELOPMENT
CORPORATION ACT**

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SCHEDULE

CHAPTER 382

THE KENYA TOURIST DEVELOPMENT
CORPORATION ACT25 of 1965
22 of 1987*Commencement: 9th November 1965*

An act of Parliament to provide for the establishment of
The Kenya Tourist Development Corporation and for
purposes incidental thereto and connected therewith.

1. This Act may be cited as the Kenya Tourist
Development Corporation Act.

Short title

2. In this Act, unless the context otherwise requires

Interpretation
22 of 1987,

“Corporation” means the Kenya Tourist Development
Corporation established by section 3;

“Financial year” means a period of twelve months ending
with a day to be determined by the Corporation with the
approval of the Minister, so however that the first financial
year of the Corporation may be a period of less than twelve
months ending with the first occurrence of the day so deter-
mined, and, in the case of any alteration of that day, the
duration of the financial year of the Corporation as to which
the alteration is first to have effect may be a period of not
less than six months or more than eighteen months ending
on the new day so determined.

“managing director” means the managing director of the
Corporation appointed under section 6

3. (1) There is hereby established a Corporation, to be
known as the Kenya Tourist Development Corporation, which
shall be charged with the duty of securing the investigation,
formulation and carrying out of projects for developing the
tourist industry of Kenya.

Establishment of
Kenya Tourist
Development
Corporation and its
functions

(2) For the purpose of the discharge of its duty under
subsection (1) the Corporation shall have power, either alone
or in association with other authorities or persons, or as

Managing agent or otherwise on behalf of other authorities
Or persons –

- a) to investigate and formulate projects for the promotion or expansion of new or existing enterprises to which this section applies, and to carry out such projects
- (b) to carry on undertakings which appear to the Corporation to be needed for or in connection with the promotion or expansion of new or existing enterprises to which this section applies;
- (c) to carry on any activities incidental to such a project or to such an undertaking which appear to the Corporation to be requisite, advantageous or convenient for or in connection with that project or undertaking.
- (d) to assist other authorities or persons, either financially, or in any other way, to perform any functions which the Corporation is empowered to perform by virtue of any of the foregoing paragraphs;
- (e) to establish or expand, or promote the establishment or expansion of, other bodies to carry on (either under the control or partial control of the Corporation or independently) any such functions as are mentioned in paragraph (d).

(3) This section applies to any enterprise for the development of the tourist industry of Kenya, whether carried on in of the tourist industry of Kenya, whether carried on in Kenya or elsewhere, and, without prejudice to the generality of the foregoing, includes any enterprise falling within one or more of the following classes, that is to say –

- (a) enterprises for the operation of hotels, motels, lodges, camps, camping sites, restaurants and other places of accommodation, refreshment or recreation;
- (b) enterprises for the provision of safaris, expeditions or tours (whether for hunting, fishing, photography or otherwise);
- (c) enterprises for the promotion and advertising of tourist to or in Kenya, and for the provision of information and booking facilities for tourists;
- (d) enterprises for providing, maintaining or improving transport facilities or transport services for tourists to or in Kenya; or
- (e) enterprises for the development, preservation or study

of the wild and natural life, flora and vegetation of Kenya.

(4) The Corporation shall have power to do anything and to enter into any transaction (whether or not involving the expenditure, borrowing in accordance with the provisions of this Act in that behalf, lending or investment of money the acquisition of any property or rights, or the disposal of any property or rights) which in its opinion is incidental or conducive to the exercise of its powers under this Act.

(5) Nothing in this section shall be construed –

- (a) as empowering the Corporation to carry on any class or description of enterprise which by virtue, of any law, it is the function of any other authority or person to provide, except in so far as the Corporation is not prohibited by law from so doing; or
- (b) as exempting the Corporation or any enterprise from any provision as the law relating to the licensing or control of any class or description of enterprise.

4. (I) If it appears to the Minister to be expedient to add to the classes of enterprise specified in section 3 (3) the Minister, with the consent of the Minister for the time being responsible for finance, may by notice published in the Gazette direct that that subsection shall have effect with the addition of such one or more enterprises as may be specified in the notice.

Extension of
powers of
Corporation

(2) Any notice made under this section shall be laid before The National Assembly as soon as practicable after publication, and, if a resolution that the notice be annulled is passed by the National Assembly on any of the twenty days on which that House sits next following the day on which the notice is laid before it, that notice shall henceforth be void, done thereunder, or to the making of a new notice.

5. (I) The Corporation shall consist of-

- (a) a chairman, who shall be appointed by the Minister;
- (b) not less than six or more than nine members appointed by the Minister from amongst persons who, in his opinion, possess qualities likely to be of benefit to the Corporation, and of whom

Membership
and
constitution of
Corporation
22 of 1987
Sch

- (i) not less than one shall be appointed by reason of his knowledge or commercial or financial matters;
 - (ii) not less than one shall be appointed by reason of his knowledge or international tourism;
 - (iii) not less than one shall be appointed to represent the interests of the hotel industry
 - (iv) not less than one shall be appointed to represent the interests of tour operators, and air charter operators on travel agents; and
- (c) four members, being the Permanent Secretaries to the Ministries for the time being responsible for tourism, natural resources, finance, and economic planning and development, respectively, or the person deputed in writing from time to time by any such Permanent Secretary to take his place as a member of the Corporation
- (2) The Corporation shall elect a vice-chairman annually from among its members.
- (3) The Corporation may co-opt to serve on it for such length of time as it thinks fit an person or persons whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at any meeting of the Corporation or be counted as a member for the purpose of forming a quorum.
- (4) The provisions of the Schedule shall have effect with respect to the Corporation.
6. (1) The Minister shall, with the agreement of the Corporation, appoint a managing director, who shall be the chief executive officer of the Corporation and shall be responsible to the Corporation for the day-to-day management of all the business of the Corporation.
- (2) The managing director shall be entitled to be present at all meetings of the Corporation and to take part in the discussions, but he shall not be entitled to vote.
- (3) Whenever the office of managing director is vacant, or the managing director is for a reason unable to exercise his functions under this Act, those functions shall be exercised by such person as the Corporation, with the approval of the Minister, may appoint to act as managing director.

7. The Corporation may appoint such committees, whether wholly or partly of its own members or otherwise, and with such advisory or executive functions, as the Corporation may consider necessary.

Committees of
Corporation

8. The Minister may, after consultation with the Corporation, give to the Corporation directions of a general or special character as to the exercise and performance by the Corporation of its functions (including the exercise of rights conferred by the holding of interests in companies) in relation to matters which appear to him to affect the public interest, and the Corporation shall give effect to any such directions.

Directions of a
Minister

Provided that the Corporation shall not be required to give effect to any direction of the Minister which, if given effect to, would oblige the Corporation to engage in any activity or undertaking which the Corporation considers to be unsound, whether economically or otherwise, unless that direction states that the Government has undertaken to pay the amount of any loss incurred by the Corporation by reason of giving effect to that direction.

9 (1) Subject to this section, the Corporation may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

Borrowing
powers 22
of 1987 Sch

(2) The power of the Corporation to borrow shall be exercisable only with the approval of the Minister, given with the consent of the Minister for the time being responsible for finance, as to the amount (within the maximum specified in subsection (3), as to the sources of the borrowing and as to the terms on which the borrowing may be effected; and an approval given in any respect for the purposes of this sub-section may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

(3) The Corporation shall not borrow so as to have outstanding at any time -

- (a) in respect of sums borrowed temporarily, by way of overdraft or otherwise, an aggregate amount exceeding five hundred thousand pounds; or
- (b) in respect of sums borrowed otherwise (whether by way of advance from the Government under section 10 or from other sources) an aggregate amount

exceeding thirteen million, two hundred and fifty thousand pounds.

(4) A person lending money to the Corporation shall not be bound to inquire whether the borrowing of such money is within the power of the Corporation.

10. (I) Subject to section 9, the Government may, for the purpose of enabling the Corporation to defray expenditure properly chargeable to capital account, including provision of working capital, make advances to the Corporation up to such amounts as may be provided by Parliament.

Advances and
guarantee of
borrowing by the
Government

(2) The Government may guarantee, in such manner and on such conditions as it may think fit, the repayment of the principal of, and the payment of interest and other charges, on, any authorized borrowings of the Corporation made otherwise than by way of advances under subsection (I).

(3) Immediately after any guarantee is given under this section, the Minister for the time being responsible for finance shall lay a statement of the guarantee before the National Assembly.

(4) Where any sum is issued for fulfilling such a guarantee, the Minister for the time being responsible for finance shall, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before the National Assembly a statement relating to that sum.

11. The Corporation shall, at such times and in such manner as the Minister may with the approval of the Minister of the time being responsible for finance direct, make repayments of such amounts as the Minister may so direct in or towards repayment of advances made to the Corporation under section 10, and of any sums issued in fulfillment of any guarantee given thereunder, and payments of interest on what is outstanding for the time being in respect of such advances and of any sums so issued at such rate as he may so direct, and different rates of interest may be directed as respect different advances or sums and as respects interest for different periods.

Repayment of
advance and
sums issued to
meet
guarantees

12. (I) The Corporation shall establish a reserve fund.

Reserve fund

(2) The Management of the reserve fund, the sums to be carried from time to time to the credit thereof and the application thereof shall be as the Corporation may determine;

Provided that no part of the said fund shall be applied otherwise than for the purposes of the Corporation.

13. (I) It shall be the duty of the Corporation to endeavor to secure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue account for that year shall be applied by the Corporation for such purposes as it may determine with the approval of the Minister given with the consent of the Minister for the time being responsible for finance.

Balancing of
Revenue account
and surplus
revenue

(2) Any excess of the revenues of the Corporation for any financial year thereof over the sums properly chargeable to its revenue account for that year shall be applied by the Corporation for such purposes as it may determine with the approval of the Minister given with the consent of the Minister for the time being responsible for finance.

14 (I) The Corporation shall keep proper accounts and other records in relation to the business of the Corporation and shall prepare in respect of each financial year a statement of accounts in such form as the Minister with the approval of the Minister for the time being responsibly for finance may direct.

Accounts and
audit 22 of
1987, Sch.

(2) The said statement shall give separate information as respects each of the main activities of the Corporation, and shall show as far as possible the financial and operating results of each such activity.

(3) The accounts of the Corporation shall be audited by the Auditor-General (Corporations) in accordance with Part VII of the Exchequer and Audit Act.

Cap 412

(4) (Repealed by 22 of 1987, Sch.)

(5) (Repealed by 22 of 1987, Sch.)

(6) The expenses of and incidental to the audit shall be paid by the Corporation.

Annual
Report

15. (1) The Corporation shall, as soon as possible after the end of each financial year, make to the Minister a report on the exercise and performance by the Corporation of its functions during that year and on its policy and programmes.

(2) The report of the Corporation for any year shall set out any direction given by the Minister to the Corporation during that year, unless the Minister has notified the Corporation his opinion that it is against the public interest to do so.

(3) The Minister may give directions as to the form of the reports to be made under this section, and the Corporation shall comply with any such directions.

(4) The Minister shall lay before the National Assembly a copy of the report made for each financial year by the Corporation, and the Corporation shall, if the Minister so requires, publish such report in such manner as the Minister may specify.

16. Any sums required for fulfilling any guarantee under this Act of borrowings of the Corporation shall be charged on and issued out of the Consolidated Fund, and all sums repaid by the Corporation under section 11 shall be paid into the Consolidated Fund.

Issues out of and
payments into
Consolidated
Fund

SCHEDULE

{s. 5 (4)}

PROVISIONS AS TO KENYA TOURIST DEVELOPMENT CORPORATIONS

Corporate Capacity

1. The Corporation shall be a body corporate with perpetual succession and a common seal, with the capacity to sue and be used, and with power to purchase, hold, manage and dispose of land.

Tenure and Vacation of Officer

2. (1) This paragraph shall apply to the chairman and other members of the Corporation who are appointed by the Minister.

(2) Subject as hereinafter provided the chairman and other members to whom this paragraph applies shall hold or vacate office as such in accordance with the instruments respectively appointing them.

(3) The chairman and any other member to whom this paragraph applies may at any time, by a notice in writing under his hand addressed to the Minister, resign his office as such.

(4) If the Minister is satisfied that the chairman or any other member to whom this paragraph applies -

- (a) has been absent from three consecutive meetings of the Corporation without the permission of the Corporation; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of his office.

The Minister may declare his office as chairman or a member of the Corporation, as the case may be, to be vacant, and shall notify the fact in such manner as the Minister thinks fit; and thereupon the office shall become vacant.

(5) The chairman and any other member to whom this paragraph applies who ceases to hold office as such shall be eligible for re-appointment.

3. The Corporation shall pay to each member thereof (other than a member who is a public officer in receipt of a salary), in respect of his office as such, such remuneration as may be determined by the Minister with the consent of the Minister for the time being responsible for finance, and shall pay to the chairman thereof, in respect of his office as such, such remuneration (in addition to any remuneration to which he may be entitled in respect of his office as a member) as may be so determined.

4. The Corporation may in its discretion pay to the chairman and other members such traveling and other expenses as may reasonably have been incurred by them by reason of the duties of their office.

Meetings and Proceedings

5. Subject as hereinafter provided, the Corporation shall have power to regulate its own procedure.

6. The Corporation shall meet not less than six times every year.

7. The chairman, or where the chairman is not available, the vice-chairman, may at any time convene a special meeting of the Corporation, and shall do so within one month of the receipt by him of a written request signed by at least two other members.
8. In the absence of the chairman from any meeting of the Corporation the vice-chairman shall preside, and in the absence of both chairman and vice-chairman, the members present shall elect one of their members to preside at such meeting.
9. At every meeting of the Corporation the chairman or other member presiding shall have a casting as well as a deliberative vote.
10. The validity of any proceedings of the Corporation shall not be affected by any vacancy amongst the membership thereof, or by any defect in the appointment of a member thereof.
11. The quorum shall be six, and where any member is disqualified from taking part in any deliberation or decision of the Corporation with respect to any matter, he shall be disregarded for deliberating on or deciding that matter.

Declaration of Interest

12. A member of the Corporation who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation, or in any contract made or proposed to be made by any body or person in which the Corporation holds an interest, which is brought up for consideration by the Corporation, shall as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Corporation; and the disclosure shall be recorded in the minutes of the Corporation, and the disclosure shall be recorded in the minutes of the Corporation, and the member shall not take any part after the disclosure in any deliberation or decision of the Corporation with respect to that contract;

Provided that the failure of any member of the Corporation to comply with the provisions of this section shall not affect the validity of any proceedings of the Corporation.

Authentication and Proof of Documents

13. The fixing of the common seal of the Corporation shall be authenticated by the signatures of -

- (a) the chairman of the Corporation, or some other member thereof authorized either generally or specially by the Corporation to act in his stead for that purpose; and
- (b) some other person authorized by the Corporation, either generally or specially, to act for the purpose.

14. The Corporation may, by writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney to executed deeds on its behalf in any place outside Kenya; and a deed signed by such an attorney on behalf of the Corporation and under his seal shall bind the Corporation and have the same effect as if it were under the common seal of the Corporation.

15. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed on behalf of the Corporation by any person generally or specially authorized by the Corporation for that purpose.

16. Any document purporting to be a document duly executed under the seal of the Corporation or under the seal of an attorney of the Corporation shall be received in evidence and shall unless the contrary is proved, be deemed to be a document so executed.

Staff of Corporation

17. The Corporation may employ such officers, servants or agents as ay appear to it to be necessary for the efficient discharge of its functions.

18. The Corporation shall –

- (a) pay to its officers, servants and agents such remuneration as the Corporation may determine; and
- (b) as regards any officers, servants or agents in whose case it may be determined by the Corporation with the

approval of the Minister to make provision for the payment of pensions, gratuities or other like benefits on their death, injury or retirement, pay or provide for the payment of them or to others by reference to their service, of such pensions, gratuities or other like benefits, as may be so determined.

19. Provision for pensions, gratuities or other like benefits under the foregoing paragraph may be made either by contributory or by non-contributory arrangements or partly by the one and partly by the other.

Exemption from Stamp Duty

20. No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of or in favour of the Corporation would be liable to pay such duty.

21. Save as provided in the last foregoing paragraph, nothing in this Act shall exempt the Corporation from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.

