



BOARD CHARTER

NATIONAL OIL CORPORATION OF KENYA

TERMS OF REFERENCE



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1. INTRODUCTION

The National Oil Corporation of Kenya (“the Corporation”) Board is responsible for the governance practices of the organization. The Board derives its authority from the following Acts and documents:

- 1.1 The Companies Act 2015
- 1.2 The State Corporations Act-Chapter 446 of the Laws of Kenya
- 1.3 The Memorandum and Articles of Association of National Oil
- 1.4 Mwongozo (The Code of Governance for State Corporations)
- 1.5 Government Circulars and Directives
- 1.6 Other relevant legislation and policy documents

2. OBJECTIVE

- 2.1 This Charter has been prepared by the Board of Directors of the Corporation to assist the Board and its Committees in the exercise of their responsibilities more specifically to provide a clear statement of the roles, responsibilities, processes and operations of the Board, for the benefit of both the Board and Management. It also aims at ensuring that the practices of the Board are consistent with and reflect the Board’s commitment to best practice in Corporate Governance.
- 2.2 The Charter seeks to ensure effectiveness of each Director’s contribution in the governance of the Corporation consistent with the standards of independent judgement, ethics and integrity by facilitating full and free exercise of Directors’ professional competencies and personal qualities.
- 2.3 These principles and policies are in addition to and not intended to change any law, regulation or guidelines on Corporate Governance, which the Corporation ascribes to.
- 2.4 Each director is expected to familiarize himself/herself with the legal and regulatory texts associated with the Corporation, the Corporation’s Articles of Association, the Director’s Code of Corporate Governance and any knowledge necessary for the proper discharge of his/her duties.
- 2.5 Each Director undertakes to subscribe to this Charter.



3. COMPOSITION

The Board shall consist of:

- 3.1 A Chairman appointed by the President who shall be non-executive unless the President otherwise directs;
- 3.2 The Chief Executive Officer;
- 3.3 The Principal Secretary of the Ministry of Petroleum & Mining;
- 3.4 The Principal Secretary to the National Treasury;
- 3.5 The Attorney-General or his/her representative;
- 3.6 Not more than eleven other members not being employees of the state corporation, of whom not more than three shall be public officers appointed by the Cabinet Secretary
- 3.7 Every appointment under (a) and (e) shall be by name and by notice in the Gazette and for a period specified in the appointing instrument.¹

4. EXIT FROM OFFICE

A Board Member may exit from office:

- 4.1 If a written notice of resignation served to the Cabinet Secretary; or
- 4.2 is absent, without the permission of the Cabinet Secretary notified to the Board, from three consecutive meetings; or
- 4.3 is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding two thousand shillings; or
- 4.4 is incapacitated by prolonged physical or mental illness from performing his/her duties as a member of the Board; or
- 4.5 if conducts himself/herself in a manner deemed by the Cabinet Secretary, in consultation with the State Corporation's Advisory Committee, to be inconsistent with membership of the Board.²

5. MEETINGS

- 5.1 The Board shall meet at least four (4) times in a year and not more than 4 months shall pass between Board meetings.³
- 5.2 The Board shall decide on the dates and times of Board Meetings. If no such decision is reached or if Chairman in consultation with the Chief Executive Officer so desires he/she may call for a meeting, at a date and time he/she shall decide.⁴

¹ Section 6 (1&2) State Corporation's Act Cap 446

² Section 6 (3) State Corporation's Act Cap 446

³ Section 8(1)(a)

⁴ Section 8(1)(b)



- 5.3 The number and dates of meetings and business to be transacted at each regular Board meeting shall be as contained in the Board Work-Plan and Calendar of Meetings for each year.
- 5.4 The meeting agendas shall be set by the Chairman in conjunction with the CEO and shall be structured throughout the year to ensure that significant responsibilities and goals of the Board are addressed.
- 5.5 No meeting of the Board shall be held at any place other than the registered or principal office of National Oil except with prior written approval of the State Corporations' Advisory Committee.
- 5.6 Where a Director is unable to attend a meeting, such a Director shall communicate through the Chairman or the Chief Executive Officer concerning issues they wish considered.

6. NOTICE

Unless three quarters (3/4) of the total membership of the Board agree, at least fourteen (14) days written notice of every meeting of the Board shall be given to every member of the Board.

7. QUORUM

The quorum for the conduct of business at a meeting of the Board shall be two thirds (2/3rds) of total membership of the Board or number nearest to but not less than two thirds.⁵

The Chairman of the Board shall preside at all meetings of the Board but in his/her absence the members present shall appoint one of their number to preside at the meeting.⁶

8. VOTING

Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or the person presiding shall have a casting vote.⁷ Directors agree to accept collective responsibility for the decisions of the Board.

The Chairman shall not be a member of any Committee save for an ad hoc committee.

⁵ Sec 8(1)(d) State Corporation's Act.

⁶ Sec 8(1)(f)

⁷ Sec 8(1)(g)



9. BOARD PAPERS

For regularly scheduled meetings, an agenda and other necessary documentation shall be provided to the members by the Secretary within seven (7) days but not less than four (4) days of the scheduled Committee meeting. The Directors shall attend meetings regularly and shall be adequately prepared to participate in discussions.

10. DUTIES AND RESPONSIBILITIES OF DIRECTORS

10.1 Directors' General duties

10.1.1 Directors' Primary Duty and Code of Conduct.

Each Director shall act first and foremost in the best interest of the Corporation and not for any other collateral purpose; exercise his/her duties and responsibilities in good faith; and act with care and diligence which a reasonable person would exercise if they were a Director in the same circumstances.

Each Director undertakes that, in arriving at a decision on any issue, he or she shall strive to ensure that the decision is in the best interest of the Corporation and not favour any collateral or their interest.

10.1.2 Directors' Access to Officers and Employees

Directors shall have access to the employees of the Corporation through the Chief Executive Officer (CEO) or the Company Secretary. Directors shall use their best judgment to ensure that any such contact is not disruptive to the business of the Corporation. Any information which a Director may require shall be obtained through the Chief Executive Officer.

10.1.3 Information and Confidentiality

Directors must take the necessary precaution to preserve the confidentiality of information concerning the Corporation which is communicated to them in connection with their functions and not divulge the information under any circumstances.

10.1.4 Conflict of Interest

Each Director undertakes to disclose to the Board fully and immediately it comes to their attention any real or potential conflict of interest in any matter before the Board. A Director with such a conflict shall not participate in any discussion of such a matter.



In all circumstances, each Director shall preserve his/her independence of analysis, judgement, decision and action, and refuse any pressure, direct or indirect, which might be exercised on him/her whether by other Directors, creditors, suppliers and any third party.

Each Director undertakes not to seek, nor accept, from the Corporation or any other party, directly or indirectly, any advantage that might be considered as compromising his/her independence.

10.1.5 Board Effectiveness and Evaluation

The Board will conduct an annual Board evaluation to determine its effectiveness as a collective agency and as individual Directors.

10.2 Specific Duties of the Board

The Powers and duties of Directors are as set out in the Companies Act, the State Corporations Act, Mwingozo Code of Governance for State Corporation's, National Oil's Memorandum and Articles of Association, other relevant legislation and policy documents.

11. INDUCTION, CONTINUING EDUCATION AND ACCESS TO INFORMATION

Directors will on appointment participate in an induction programme involving comprehensive briefings from Management on the company's business and key issues and site visits.

Each Director may participate in continuing education programmes conducted for Directors involving regular briefings by internal and external specialists on matters relevant to their role as Directors and key industry developments.

12. CHAIRMAN

The principal role of the Chairman is to provide leadership to the Board and ensure that the Board is discharging its mandate effectively.

The Chairman will work with the Chief Executive Officer and Company Secretary to set the agenda for each meeting and will ensure that all Directors are adequately briefed in relation to issues addressed at Board meetings.

A handwritten signature in blue ink, consisting of a series of loops and curves, positioned over a dotted line that follows the "Signed....." text.



13. BOARD COMMITTEES:

- 13.1 The Board shall establish not more than 4 Board Committees and such ad hoc committee as required.⁸
- 13.2 The Board shall⁹:
 - 13.2.1 Provide terms of reference for each committee.
 - 13.2.2 Review the mandate of Committees periodically.
 - 13.2.3 Determine the frequency of meetings
 - 13.2.4 Appoint the chairperson of each Committee.
- 13.3 Board Committees shall make recommendations to the Board.

14. REVIEW OF THE CHARTER

The Board will review this Charter from time to time to ensure that it remains consistent with the Board's objectives, current law and best practices.

15. CHARTER APPROVAL

APPROVED by Board of Directors

This FOURTEEN day of JANUARY 2022

SIGNED


 Date 14/01/2022
 Board Chairman

⁸ Mwongozo Code of Corporate Governance for State Corporations.
⁹ Ibid