



**REPUBLIC OF KENYA**

**DRAFT**

**SESSIONAL PAPER NO. .... OF 2005**

**ON**

**PRIVATIZATION OF STATE CORPORATIONS  
AND  
INVESTMENTS**

## **PREFACE**

This Sessional Paper has been prepared in response to issues raised in various public forums; debates in Parliament on the Privatization Bill; and recent deliberations between the Minister for Finance and the Finance and Trade Committee of Parliament on the Privatization Bill. These deliberations have clearly indicated that although Government policy on privatization exists in various forms including Cabinet Papers and Minutes, the same has not been shared adequately with some key stakeholders including Parliament.

The paper is divided into three chapters. In the first chapter the paper discusses the historical background and rationale for establishment of State Corporations and performance review. The Second chapter covers the implementation of the first phase of the privatization programme and weaknesses identified during the implementation of this phase. Chapter three covers the NARC Government's privatization policy including the proposed institutional framework.

This strategy deals with privatization of commercial enterprises only and leaves out the non-commercial enterprises, outlined in the list attached as Annex 7. The non-commercial enterprises include: regulatory, research, educational, professional, developmental/promotional agencies, cultural and social and revenue collection state corporations. The government has already initiated a comprehensive review of the mandates of these corporations with a view to rationalizing their operations by merging corporations whose mandates overlap, liquidating the ones whose mandates are no longer relevant to the country's needs and restructuring the remaining ones to ensure that they justify their existence through fulfillment of their mandates.

## **CHAPTER 1**

### **HISTORICAL BACKGROUND, RATIONALE FOR ESTABLISHING STATE CORPORATIONS AND PERFORMANCE REVIEW**

#### **1.1 HISTORICAL BACKGROUND AND RATIONALE FOR ESTABLISHING PUBLIC ENTERPRISES**

- 1.1.1 From 1963 when Kenya achieved political independence up to 1979 when a comprehensive review of the State Corporations sub-sector was carried out, the Government's participation in commercial activities grew rapidly and broadly resulting in state dominance in various forms (including monopolies) in many commercial activities. The establishment of the parastatals was driven by a national desire to (i) accelerate economic social development; (ii) redress regional economic imbalances; (iii) increase Kenyan Citizen's participation in the economy; (iv) promote indigenous entrepreneurship; and (v) promote foreign investments (through joint ventures). This desire was expressed in the Sessional Paper No. 10 of 1965 on African Socialism and its application to planning in Kenya.
- 1.1.2 The Sessional Paper discussed in detail the theory of democratic African Socialism to Planning in Kenya and specified strategies, which were to be applied to achieve Africanization without hurting the economy and within the country's declared aims. The paper raised key issues with regard to where we were going and how we were going to get there. It emphasized that rigid doctrinal systems had little chance for survival and that as a must the strategy had to be adaptable to new and changing circumstances in order to survive. It also pointed out that the system had to make progress toward ultimate objectives and solve more immediate problems with efficiency and emphasized the need for perpetual existence in transition by having new targets whenever existing ones are met.
- 1.1.3 The paper also outlined the principles, which guided nationalization under which a few private sector operations were brought under government control. It pointed out that nationalization was only needed: -

- (i) when the assets in private hands threaten the security or undermine the integrity of the nation; or
- (ii) when productive resources are being wasted; or
- (iii) when the operation of an industry by private concerns has a serious detrimental effect on the public interest; or
- (iv) when other less costly means of control are not available.

1.1.4 The paper indicated that once in government hands the nationalized operations had to operate efficiently, cover costs and earn profits at least equivalent to taxes paid when operating efficiently. It also emphasized the complementary role played by private sector in creating additional productive assets for the country and employment and the need to utilize government resources in areas in which private sector is unable and unwilling to invest.

## **1.2 REVIEW OF THE PUBLIC ENTERPRISES PERFORMANCE**

1.2.1 A comprehensive review of the public enterprises performance was carried out in 1979 (the Report on the Review of Statutory Boards) and 1982 (the Report of the Working Party on Government Expenditures).

1.2.2 The Report on Review of Statutory Boards pointed out that: -

- (i) the growth in the parastatal sector had not been accompanied by development of efficient systems to ensure that the sector plays its role in an efficient manner;
- (ii) there was clear evidence of prolonged inefficiency, financial mismanagement, waste and malpractices in many parastatals;
- (iii) government investments had largely been at the initiative of private promoters with government being brought in either as an indispensable partner or to undertake rescue measures;
- (iv) many of the parastatals had moved away from their primary functions, especially the regulatory boards most of which had translated their regulatory role into executive one, resulting in waste and confusion; and
- (v) there was danger of over-politicizing production and distribution through establishment of too many parastatals.

1.2.3 The Report on the Working Party on Government Expenditures concluded that productivity of the state corporations was quite low while at the same time they continued to absorb an excessive portion of the budget, becoming a principal cause of long-term fiscal problem. The report observed that: -

- (i) Kenyanization had remained merely presentational through government ownership;
- (ii) State corporations' operations had become inefficient and unprofitable, partly due to multiplicity of objectives;
- (iii) existence of parastatals in commercial activities had stifled private sector initiatives; and
- (iv) many of the joint ventures had failed, requiring the Government to shoulder major financial burden.

1.2.4 The Report on the Working Party on Government Expenditures concluded that some of the resources diverted to the government to finance the state corporations' activities could have contributed more to national development if these state corporations were left in the private sector. The report recommended that:-

- (i) the government should act as a creator of favourable setting within which people can develop themselves and the economy;
- (ii) the government should divest from its investments in commercial and industrial enterprises to transfer active participation to more Kenyans through participation in shareholding;
- (iii) the government should reduce exposure to risk in areas in which the Private Sector can assume risk without government intervention;
- (iv) the government should dismantle some of the existing administrative hurdles which discourage private sector initiative and provide needless opportunities for corruption; and
- (v) the government should reorganize legal and institutional framework regarding monitoring and supervision of parastatals.

1.1.1 Following the two reviews a number of measures were put in place. One of the measures was the enactment of the State Corporations Act. However, although this was a major attempt to streamline the management of the state corporations, the performance of most of the corporations continued to deteriorate. One reason is the

continued reliance on limited public sector financing. The state corporations continued relying on public sector financing which was not adequate to meet all the sector's needs. They continued to be financed from loans borrowed by the government and on-lent or channeled to them as government equity; loans borrowed by the enterprises on government guarantees which in most cases ended up being repaid by the Treasury when the corporations defaulted; funds provided directly by the Treasury as grants or equity; or through internally generated funds. The internally generated funds were, however, inadequate due to huge debt burdens, tariffs that were below cost recovery levels, over employment, which caused most of the revenue to be used in payment of salaries, non-viable ventures which siphoned away resources from the enterprises, corruption and mismanagement in general. In addition most of the parastatals were under capitalization from the time of incorporation as they were mainly financed from loans without due regard to the establishment of a strong financial base. Most of them also continued to spread their resources thinly due to multiplicity of objectives and poor accountability.

- 1.2.6 With inadequate resources the corporations were unable to reinvest to rehabilitate or modernize their operations. This led to poor service delivery and inability to extend services to new consumers including industries. The continued poor service delivery and lack of access in turn resulted in a vicious circle, which increased the country's cost of production, thereby affecting adversely Kenya's external competitiveness and leading to loss of jobs and of economic opportunities.

## CHAPTER 2

### PRIVATIZATION PROGRAMME CARRIED OUT BETWEEN 1992 AND DECEMBER 2002.

#### 2.1 POLICY FRAMEWORK

- 2.1.1 Sessional Paper No.4 of 1991 on Development and Employment in Kenya decried the continued deterioration of the performance of state corporations. The Paper observed that while the creation of state corporations through which government participation in economic activities was promoted was perhaps appropriate soon after independence, the objectives for and the circumstances under which most of the state enterprises were created had since changed. The paper underlined the need to implement privatization and divestiture of State corporations urgently in view of the managerial problems afflicting the parastatals leading to poor return on government investments, the existence of a larger pool of qualified manpower, availability of more indigenous entrepreneurship to permit private sector led economy and the need for non-tax revenue for the Government.
- 2.1.2 In 1992 the KANU Government initiated a comprehensive state corporations reform programme whose main objectives were to: (i) shift more of the responsibility for production and delivery of products and services from the public to the private sector; (ii) reduce the demand of the state corporations on the Exchequer; (iii) enhance the returns on Kenyan resources by achieving greater efficiency in both private and public enterprises through greater responsiveness to market signals and commercial criteria; (iv) rationalize the operations of state corporations sector; (v) improve the regulatory environment by selecting more economically rational means of regulation (thereby reducing conflicts of interest between the regulatory and commercial functions of state corporations); and (vi) broaden the base of ownership and enhance capital market development.
- 2.1.3 The Programme began in July 1992 with the issuance of the Policy Paper on Public Enterprises Reform and Privatization in which the government outlined the scope of the programme, the institutional framework and the guidelines and procedures to be applied in privatizing state corporations. The paper pointed out that there were 240 commercial public enterprises with public sector equity participation and classified

the PEs in to two categories: (i) 207 Non strategic commercial public enterprises which were to be privatised (Annex 1) and (ii) 33 Strategic Commercial public enterprises which were to be restructured and retained under public sector ownership and control (Annex 2). By the time the first phase of the programme came to an end in 2000, most of the non-strategic commercial enterprises had either been fully or partially privatized, liquidated, sold under receivership (as indicated in Annex 3) while the strategic commercial enterprises to be retained under government operation had been reduced to 15 and later to 14 enterprises as indicated in Annex 4 and as discussed below.

## **2.2 PRIVATE SECTOR INVOLVEMENT IN STRATEGIC PUBLIC ENTERPRISE**

2.2.1 In 1992 when the commercial PEs were divided into two categories, that is, the strategic and non-strategic commercial PEs, the intention was to restructure the strategic PEs and retain them under government ownership and operation. However this strategy was changed in 1998 when the government provided approval for private sector participation in some of the strategic public enterprises which were initially to be retained under government ownership and management. This change in strategy was made possible by the following: -

- (i) Restructuring of strategic enterprises separated commercial activities from regulatory functions, making it possible to privatise the commercial functions while leaving the regulatory functions under government control;
- (ii) Appreciation of the continued loss of the country's competitiveness, jobs and opportunities due poor infrastructure;
- (iii) Diminishing external resources, in form of loans and grants, which the Government had accessed earlier to finance the strategic enterprises. Many of the donors were no longer willing to lend funds to poorly managed state corporation's projects operated efficiently by the private sector in other countries. In addition, the country's ability to borrow and repay new debt had declined over the years due to failure of the projects for which GOK had borrowed earlier to generate funds to service the debt, resorting to debt repayments by the Treasury;
- (iv) Inability of the state corporations to mobilize internal resources to fulfill their national mandates;

- (v) Availability of alternative financial resources from the private sector without recourse to the Exchequer;
- (vi) Lessons from other countries which have succeeded in improving infrastructure services through public private partnerships; and
- (vii) Recognition of Public Private Partnership methods which allow for private sector resources in Strategic Enterprises operations without sale of assets.

## **2.3 INSTITUTIONAL FRAMEWORK**

2.3.1 To implement the privatization Programme a high level policy making committee, the Parastatal Reform Programme Committee (PRPC), assisted by a secretariat, the Executive Secretariat and Technical Unit (ESTU), was established under the chairmanship of the Vice President and Minister for Finance. The functions of the PRPC were:-

- (i) to supervise and coordinate the implementation of the Parastatal Reform Programme in general;
- (ii) to prioritise and determine the timing of the sale for each non-strategic PE;
- (iii) to approve the operational guidelines for privatization to be followed by ESTU, including the criteria and procedures to be followed in the divestiture decisions;
- (iv) to give final approval or rejection for the sale of public assets;
- (v) to monitor and evaluate the progress of implementing the programme; and
- (vi) to provide political impetus for privatization and participate in building public awareness and the national consensus in support of the government programme.

1.1.1 The functions of the Secretariat were:

- (i) to formulate and recommend policies, procedures, programmes and operational guidelines for divestiture;
- (ii) to prepare, with the collaboration of the holding companies where applicable, target lists of candidates for privatization for approval by the PRPC;
- (iii) to prepare, with the collaboration of the holding companies where applicable, PEs for privatization and monitor all technical privatization matters undertaken by consultants, including: valuation, selection of optimal privatization method

- and sale techniques; preparation of prospectus or offering memorandum; elaboration of marketing plan; identification of financing options; e.t.c.; and
- (iv) to organise bidding process, receive, evaluate offers and proposals and prepare recommendations to PRPC; and in collaboration with the Capital Markets Authority (CMA) carry out all activities required for public issues or share as required, including appointments of intermediaries, lawyers e.t.c.

## **2.4 EVALUATION OF THE FIRST PHASE OF THE PROGRAMME**

- 2.4.1 By the time the first phase was completed the privatization programme had raised Kshs.10.4 billion. Out of this amount Kshs.8.1 billion accrued to the Exchequer while the rest, accrued to the holding companies who were shareholders of some of the enterprises that were privatized. These were;- ICDC (Kshs.697.7 million), IDB(Kshs.251.2 million), KTDC (Kshs.506.3 million) ADC (Kshs.13.2 million), NCPB (Kshs.158.5 million) and Cotton Board of Kenya (Kshs.72.0 million). The resources accruing to these holding companies were mainly used to pay off creditors and to meet other needs as provided for in the **“Parastatal Reform and Privatization Policy on Allocation of proceeds of Privatization”** or were invested in new projects in line with the Development Finance Strategy, which requires Development Finance Institutions to sell mature investments to release the funds to finance new projects.
- 2.4.2 The programme had a number of weaknesses. In spite of the number of enterprises privatised, the impact to the economy was limited. This is because most of the enterprises privatised under this programme were relatively small and self-sufficient hence not depending on government budgetary resources. As such most of the companies, which were a drain to the Treasury and on which, significant efficiency gains could have been achieved and for which financial and management resources would have been attracted were not affected. In addition, the fact that the institutional framework outlined in the policy paper was not entrenched in the law, made the programme unsustainable financially. For this reason the Parastatal Reform and Privatization Committee (PRPC) became dormant when World Bank funding for the programme ceased. Furthermore, some of the chief executives of the holding companies were able to delay the privatization process through lack of cooperation in preparing their institutions for privatization. It was also observed that the number of

times that the transaction would be referred to the Cabinet ended up being a source of delays.

## **CHAPTER 3**

### **NARC GOVERNMENT PRIVATIZATION POLICY**

#### **3.1 INTRODUCTION**

- 1.1.1 The proposed privatization program builds on previous efforts in several respects. First, it focuses on the remaining large commercial public enterprises that were previously left out and, therefore, raises the potential benefits for efficiency gains and to the budget compared with previous efforts. Secondly, the strategy aims to strengthen the institutional framework that is critical to entrenching the process and making it transparent. Finally, government intends to encourage as broad a participation by Kenyans as possible in the companies to be privatised, which would strengthen ownership and contribute to a successful reform program and economic empowerment of Kenyans.

As indicated in the Government's Economic Recovery Strategy for Wealth and Employment creation 2003-2007 and the letter of Development Policy, the Government's key priority is to restore rapid but non-inflationary economic growth with a view to increasing employment and reducing poverty on a sustainable basis. The Government's multifaceted strategy is based on three interlinked pillars which involve strengthening economic growth, improving equity and reducing poverty, and improving governance. In line with these objectives, the ERS calls for a redefinition of the role of the state to make it a facilitator for private sector led economic growth and investment. The proposed privatization strategy is, therefore, an integral part of the public sector reforms that are to be implemented by Government to spur the recovery of the Kenyan economy, improve the social economic indicators and help Kenya to move toward the Millennium Development Goals (MDGs). Through outright privatization and various forms of Public Private Partnerships, the Government intends to mobilize resources to rehabilitate, modernize and expand Kenya's productive capacity, and has outlined a number of privatization initiatives whose implementation is to commence immediately.

In fulfillment of its promise when it came into power in 2003, the NARC Government has tabled a Privatization Bill in Parliament. The purpose of this bill is to enhance the

transparency of the privatization programme by entrenching the privatization process and the institutional framework in the law. This bill, which was debated comprehensively in Parliament and has been discussed with the members of the Finance and Trade Committee of Parliament, is awaiting finalization of debate in the House.

### **3.2 OBJECTIVES OF PRIVATIZATION AND METHODS TO BE APPLIED**

1.1.2 The main objectives of the privatization program are to; (i) improve the allocation of scarce government resources and enhance efficiency while reducing opportunities for corruption; (ii) contribute to macro-economic stability and facilitate a re-orientation of expenditures toward poverty reducing programs and priority social sectors and infrastructure; and (iii) help deepen the capital market, and broaden the base of ownership of the Kenyan economy to include more Kenyans.

#### **Improving Efficiency and Governance**

3.2.2 Because of inefficiencies and the resulting financial losses, which partly reflect, lack of corporate governance and accountability, the PEs have been unable to provide the services for which they are responsible, and have not been able to expand their infrastructure. This has contributed to raising the cost of infrastructural service and, more generally, raised the cost of doing business. This has in turn reduced Kenya's external competitiveness and made it more difficult to attract foreign direct investments. The resulting decline in total factor productivity has had an adverse impact on overall economic activity. It is expected that this decline in productivity can be reversed by involving private capital and expertise to improve infrastructure and delivery of service. This should boost the prospects for sustained long-term economic growth, and help Government achieve its objectives of poverty reduction as articulated in the ERS.

#### **Macroeconomic Stability**

3.2.3 A stable macro economic environment is critical for sustained economic growth and employment creation. Therefore, the reduction in government transfers to loss making enterprises should contribute to progress toward fiscal sustainability, a restructuring of government expenditures towards enhanced delivery of social

services such as health and education, and would facilitate increased spending on pro-poor programs and on infrastructure. An improvement in the Government's fiscal position, would reduce recourse to domestic borrowing and lend credibility to the anti-inflation effort and thereby lay the basis for sustaining the current regime of low real interests with a beneficial impact on investments and growth. In addition, a reduction in the stock of domestic debt, would reduce government expenditure on domestic interest payments and thereby create more room in the budget for priority expenditures. Equally important, privatizing the parastatals would reduce the risks to the budget associated with contingent liabilities.

### **Broadening Ownership and Capital Market Development**

3.2.4 To broaden the base of ownership in the Kenyan economy and enhance capital markets development, the Government will ensure, where this is considered appropriate, that either part or all the shares or ownership of a company, asset or function being privatised are sold to Kenyans. Where this objective is to be met, the sale of shares through the stock exchange if feasible, will be preferred. In addition where public private partnerships are considered, local participation will be encouraged through appropriate bid evaluation criteria, which take into account local participation. Other initiative to facilitate Kenyan participation will also be explored by the Commission. It should, however, be emphasized that broadening the base of ownership is only one of the objectives and may, therefore, not always be accommodated in all transactions.

3.2.5 The above set of objectives are likely to apply to a single transaction with varying degree of importance depending on the needs of the enterprise being privatised. For example broadening of ownership in the Kenyan economy may be the most important objective in a transaction in which a corporation is functioning efficiently and profitably while in the case of an infrastructure facility which has almost collapsed, the most important objective will be to attract the financial resources and technology necessary for the improvement of infrastructure and delivery of public services. Therefore, the most important objective will influence the choice of the method to be applied in privatizing any single state corporation. Some of the methods which have been used widely in privatizing public enterprises include:-

- (i) public offering of shares;

- (ii) concessions, leases, management contracts and other forms of public private partnerships;
- (iii) negotiated sales resulting from the exercise of pre-emptive rights; and;
- (iv) sale of assets including liquidations.

While these are the most common methods of privatization, there is need to recognize that as time goes on, these modalities evolve. In this respect there should be room for application of any other method considered more effective, subject to approval by the Cabinet at the time of approving the privatization proposal. Whatever method is used, however, the Privatization Commission will be required to conduct a privatization in an open and competitive way, subject to any pre-existing legal rights (such as pre-emptive rights) with a view to ensuring that the compensation received represents the fair value of the assets being privatised.

### **3.3 SCOPE AND TIMING OF THE PRIVATIZATION PROGRAMME**

3.3.1 The government recognizes privatization as an economic tool, which can be used to achieve faster economic growth through more efficient utilization of the country's resources and immediate provision of services, which would otherwise be delayed if they were to await government financing. This complementary role once used effectively, releases government resources tied in some of these enterprises and enables the government to utilize its limited resources to create an environment, which is more conducive to economic growth. The programme to be implemented by the Government involves:-

- (i) The reduction of government involvement in commercial activities through sale of public sector shares in commercial enterprises (listed in Annex 5);
- (ii) The mobilization of private sector financial and management resources into the operation of infrastructure related enterprises through public private partnerships (Listed in Annex 6).
- (iii) Sale of Stalled Projects or abandoned projects; and
- (iv) Divestiture of non-core Government services and some of the services currently provided by Local Authorities.

3.3.2 Government recognizes that the above scope will only be implemented to the extent to which sector policies allow for privatization. In this respect prior to any privatization, comprehensive review will be carried out with a view to proposing amendment to the

existing laws to facilitate privatization. In addition comprehensive reviews will also be carried out to ensure that best options for operation of certain services, including retention under Government control, are carried out.

### **THE TIMING OF THE PRIVATIZATION PROGRAM, 2005-07**

3.3.3 The Government intends the privatization program to take place over the period 2005-07. Given the importance of privatization to growth, governance, and in increasing efficiency and competitiveness of Kenya's economy, the government is committed to initiating the reforms as soon as possible. Indeed, Government intends to fast track some of the key public enterprises . Nevertheless, the overall pace of the reform program will need to take into account, important capacity constraints in implementation, the poverty and social impact of the reform, and the extent to which social safety nets can be put in place. Given that over-employment in these enterprises has been a major cause of their financial problems, it may be inevitable that there will be layoffs. However it is expected that once these institution are privatized and are working efficiently they will lead to an increase in employment in the economy.

## **3.4 INSTITUTIONAL FRAMEWORK**

### **Privatization Commission**

3.4.1 To enhance transparency in the implementation of the privatization programme, the NARC Government, through the bill tabled in Parliament, intends to establish a Privatization Commission which will implement all privatizations involving the transfer of a public entity's interest in a state corporation or other corporations; the transfer of operational control of a state corporation or a substantial part of its activities and any other privatization prescribed by regulations. This will place the implementation of privatization of all shares held by public institutions including the government, the local authorities and state corporations and the transfer of all or substantial part of their operations through management contracts, leases and other forms of Public Private partnerships under the oversight of the Commission. Through regulations, other forms of Privatizations which may not involve transfer of existing ownership of functions of the state corporations such as issuing of major licenses in mining, oil exploration etc may also be assigned to the Commission. This may apply where the Government or Parliament feels that adequate capacity is not available

within the institutions concerned to carry out the transaction or that there is no need to establish the capacity within the institutions or that it would be beneficial to implement the transaction under the oversight of the Commission and the process defined for privatizations. All other forms of privatizations such as issuing of licences for operation of telecommunication services will remain under the institutions concerned within which capacity has already been created.

- 3.4.2 The Commission should be a corporate body, which can sue and be sued and can effectively be subjected to supervision by the Minister, audits by the Controller and Auditor General and Parliamentary scrutiny. The composition of its membership should therefore reflect independence from the mainstream Government while at the same time facilitating interactions necessary to enable it to carry out its functions efficiently. In this respect the Attorney General and the Permanent Secretary to the Treasury should sit in the Commission to ensure that when implementing the transaction the committee can readily access advice on Government financial regulations and legal advice. It is also important to attract certain skills, which run through all transactions and functions of the Commission including law, accounts, and personnel management while at the same time leaving room to attract other skills into the Commission. In this respect three highly qualified and experienced members should be appointed by the Minister, each nominated by the Law Society of Kenya; the Council of Institute of Certified Public Accountants and the Federation of Kenya Employers. The members appointed from these institutions will be considered resource persons for the Government and not representatives of their institutions. In addition four other members, who are not public servants should be appointed by the Minister by virtue of their expertise with a view to attracting other skills needed by the Commission to ensure that the Commission achieves its objectives. The Chairman will be appointed by the President in the manner stipulated in the State Corporations Act. The Executive Director, appointed by the Minister, will also be a member and Secretary to the Commission and will be appointed competitively. The Commission will also invite the Permanent Secretary of the Ministry with responsibility for the State Corporation, asset or service being privatised to attend the meeting to facilitate ownership of the process by the parent Ministry.

### **Steering Committee**

3.4.3 To expedite transactions and minimize Commission's costs of implementing each transaction, the Commission will form a Steering Committee to implement each transaction on its behalf subject to directions and approvals by the Commission. The Committee will consist of the Attorney General; the Permanent Secretary/Treasury; the Permanent Secretary responsible for the Corporation, asset or service being privatised; and any other members that the Commission will specify. This will be a statutory committee of the Commission whose total number of membership will be determined by the Commission. The Commission will be the one to constitute the Steering Committee and provide for direction and approvals.

### **Financing of the Commission**

3.4.4 The operations of the Commission will be financed from amounts appropriated by Parliament to the Commission, grants and donations approved by the Minister. The amounts appropriated by Parliament will be the main source of funds for the Commission, however there may be small grants such as training grants and grants available from a number of international bodies such as the Public Private Infrastructure Advisory facility (PPIAF) of the World Bank Group, that the Commission may receive. It is considered necessary that such grants be approved by the Minister to ensure that they are not used to compromise the Commission's work.

### **Privatization Appeals Tribunal**

3.4.5 To expedite resolution of disputes a tribunal has been proposed in the privatization bill. The tribunal will consist of a chairman appointed by the President; two other members appointed by the Minister and a public officer designated by the Attorney General to be the Secretary. It has been considered whether this should be an ad hoc tribunal or a tribunal with a fixed term of office. A fixed term is considered necessary to avoid time which could be lost in appointing members; facilitate involvement of members in relevant skill building initiatives; benefit from experience on previous appeals; and avoid compromise if members are appointed for specific transactions. It has also been considered whether the chairman should be appointed by the Chief Justice and it has been agreed that this is not necessary because anybody not satisfied by the decision of the tribunal will appeal to the High Court. The allowances of the members of the tribunal will be set with the consideration of reducing costs in mind.

## **3.5 PROCEDURES AND GUIDELINES**

### **Approvals**

- 3.5.1 The approval for privatization of a public enterprise will consist of two stages. The first stage is the approval of the programme, which will be formulated by the Commission, approved by the Cabinet and gazetted in the Kenya Gazette. The second stage will be submission of a detailed privatization proposal to the Cabinet. Once the Cabinet approves the proposal, the transaction will be implemented under the oversight of the Commission using the clearly defined process outlined in the law. In cases where enabling legislation does not allow for the privatization, as part of the approval process amendments to the applicable law will also be submitted to Parliament.
- 3.5.2 Once the privatization programme is approved, the Commission will proceed to prepare a detailed proposal with the assistance of consultants, which it may engage at this stage. The work carried out at this stage should be adequate to enable the Commission to submit to the Cabinet a detailed proposal which among other things sets out: the purpose of the establishment or existence of the asset; the extent to which the purpose has been met by the asset or operation including any inadequacies in meeting the purpose; the rights or other entitlements and resources that have been provided to meet the purpose; if the asset is a state corporation, the financial position of the asset; the recommended method of privatization; the estimated cost of implementing the proposed privatization; the recommendation for dealing with the employees directly affected by the proposed privatization, including benefits they might be owed; and a work plan for the proposed privatization which will outline the activities and timing required to implement key transaction milestones including amendment of any laws which may be necessary to implement the transaction. These details do not limit what is to be covered by the proposal. What are specified are the key issues considered necessary in making a decision on whether or not to approve the proposal to privatise an enterprise. Among other things the provision of the details will ensure that the objectives for which a corporation was formed are not ignored, that privatization is adequately justified and that personnel issues are adequately addressed prior to privatization.

## **Monopolies and regulation**

3.5.3 The Government will take all necessary actions to ensure that unregulated monopolies are not placed in private hands. In this connection it has put in place a number of reform initiatives (including carrying out market design studies) with a view to ensuring that demonopolization of industries in which it intends to bring in private sector management takes place prior to privatization. In case of “natural monopolies” - where increased competition is likely to reduce economies of scale and increase instead of lowering costs to consumers, there would be no need to break up the monopoly immediately. This may however be carried out when demand increases to justify more players in the industry. In such cases the Government will put in place necessary safety and economic regulatory measures depending on the identified regulatory needs of the sector. In addition where the regulatory framework is not in place by the time the transaction is completed, a provision for a regulatory framework will be made in the sale/concession agreement.

## **Increasing Participation of Kenyans in The Economy**

3.5.4 As noted earlier, one of the objectives of the privatization program is to broaden the base of ownership of the economy to include more Kenyans. However, it may not always be possible to do so, especially in those circumstances where the amount of capital, technology and management expertise required by the firm is out of reach of the citizens. In some cases Kenyan citizens may not be interested in purchasing shares in some companies. This has already been experienced, delaying benefits expected to accrue from privatization. Determination of the percentage of shares to be sold to Kenyans normally takes place at an advanced stage of the transaction, preferably after interaction with the market but before commencement of the bidding process. In this respect the Minister should be given authority to approve the percentage and timing relating to the Kenyan shareholding at the appropriate time to avoid delays in the transaction, which could be occasioned by a lengthy approval process.

## **Disclosure of transaction information**

3.5.5 To enhance transparency, information should be shared with the public at various stages of the transaction. Such notices should be issued as follows:-

- (i) Gazettement of the programme approved by the Cabinet to notify all stakeholders that the Government has made the decision to privatise the enterprise, function or asset;
- (ii) Publishing of a notice after the approval of the proposal in at least two newspapers with a national circulation; at least twice with at least seven days between the first and last publication. Such notices should set out the description of what is being privatised; and description of the method of privatization including, if applicable, any deadlines and closing dates. This is the minimum requirement and does not limit advertisements on radio, television, international press etc. Any other advertisements in addition to the minimum requirement will depend on the targeted market and cost considerations;
- (iii) Gazettement of the decision once it is decided whom the assets, operational control or operations are to be transferred to and on what terms. This will make the decision public and afford any aggrieved party an opportunity to appeal to the tribunal or to go to court to challenge the decision. If the time allowed for any aggrieved party to appeal to the tribunal lapses before the decision is challenged, then the parties will proceed to sign the agreement.
- (iv) Gazettement of another notice after signing of a sale agreement, which should: describe the asset or operations which have been privatised; describe in summary the form of the transaction used to give effect to the privatization; provide the names and addresses of the persons to whom the assets, operational control or operations are being transferred; and other such information as the Commission may consider appropriate.
- (v) The programme will also be supported by a well thought out communication strategy to ensure Kenyans are well informed.

3.5.6 The announcements under 3.5.5 will afford the public the opportunity to monitor the transaction at various stages. In addition, the Commission will also release information in the course of its work either in response to queries raised by stakeholders or when it considers it necessary to inform the public. With the above disclosures in place, disclosure of unauthorized information should be discouraged. This is because such disclosures are in many cases driven by personal commercial gains as opposed to national interest. In some cases they also disadvantage the Government as the information could negatively affect the bid prices. There is need to assure these entities that information availed to the Commission by them will only be

disclosed to the extent to which it is considered necessary for the proper performance of the Commissions work.

### **Participation by State Corporations**

3.5.7 The sale of a State Corporation or portion thereof to another State Corporation should not be allowed under the privatization programme. Such sales will not, in almost all cases, meet the Government privatization objectives. It is also appreciated that these funds are regulated under the Retirement Benefits Authority. However, social security funds, compensation funds, superannuation funds, insurance funds and endowment funds under Government control should participate in privatizations for the benefit of their members. This will, among other things, avoid denying them opportunities available to contributors in other similar schemes while at the same time meeting a number of the Government privatization objectives. Nevertheless when they sell shares held by them as part of their investments in state corporations, this should be carried out under the privatization framework to ensure adequate Government oversight in view of the contingent liabilities arising from the Government's moral and social obligations as the promoter of the scheme.]]

### **Investments prior to privatization**

3.5.8 Investments carried out prior to sale of public investment may not necessarily add any net value to the sale proceeds. Partly such investments may involve corrupt practices, which may erode the perceived gains from the additional investments. In addition the technology applied in the investment may be less efficient or too expensive compared to what the new owners would have put in place and new owners may not factor these investments in their bid price. In this respect, strategies which require extensive investments prior to privatization should not be allowed unless they are necessary to maintain the operations of the state corporation and have a positive effect on the net worth of the state corporation prior to the sale. Further to this, given the attraction of private sector financing as one of the key objectives for privatization, borrowing prior to privatization should be discouraged unless this is necessary to maintain the operations of the state corporation during the transaction period.

### **Valuations**

3.5.9 A valuation will be carried out for each privatization to assist the Commission in implementing the transaction. This valuation, which may be used by the Commission to set a reserve price, will also assist the Controller and Auditor General and other national institutions including the Treasury and Parliament to evaluate whether the sale proceeds represent a fair value for the public asset that has been privatised. The valuation normally includes asset valuations and business valuations, which would then be used to value the shares.

3.5.10 Each of the participants in the privatization transaction carries out their own asset and business valuation and keeps the valuation confidential for their use. Disclosure of the Commission's valuation would distort the competitive process and eliminate gains, which could accrue from prices higher than Government valuation. If the Commission's valuation were disclosed, bidders would mainly concentrate on discounting the Commission's valuation and would, in almost all cases offer lower bids. Valuations carried out by the Commission should therefore be kept confidential for its use. As the Commission will be a State Corporation, valuation services will be procured competitively in line with the public sector procurement guidelines.

### **Sale of shares on credit**

3.5.11 The Government or the State Corporation that sells shares will not sell them on credit or provide financing for the purchase of the shares. This is considered necessary to ensure that the Government's and corporation's objective of mobilizing net resources is not compromised; while at the same time ensuring that control of public resources is not effected before they are fully paid for. However, with regard to promotion of local shareholding the Government will encourage financing by institutions such as banks. In addition, in some cases sales of either all or part of the shares set aside for Kenyan citizens will be deferred to facilitate broader participation.

### **Signing of sale agreement**

3.5.12 Agreements giving effects to privatization will be signed by the public entity having legal rights over the asset or operation and countersigned by the Permanent Secretary to the Treasury. The countersigning, which will not apply to shares sold through the stock exchange and assets sold through liquidations which are less than Kshs.10 million, is considered necessary to ensure that the Treasury is fully aware and plans

for financial obligations and contingent liabilities which have not been transferred to the new owner of the asset. Under the Government Contracts Act, countersigning by the Treasury is required for contracts with a value exceeding Kshs.10 million.

### **3.6 PRIVATIZATION CHALLENGES**

#### **Loss of jobs**

3.6.1 The Government recognizes loss of jobs as a major challenge which must be dealt with, with or without privatization. Loss of jobs arises as a result of excess staff employed over the years without due regard to their productivity and sustainable levels of personnel emoluments. In sectors such as telecommunications, liberalization has shifted a lot of the business earlier controlled by Telkom Kenya to the private sector while staff numbers have remained intact. Over-employment has resulted in a number of state corporations using most of their revenues to pay salaries. In some cases the revenues are not even adequate to meet all the staff costs leading to accumulation of arrears on statutory deductions amounting to billions of Kenya shillings.

3.6.2 Economic reality dictates that excess staff be reduced to sustainable level otherwise whole corporations will collapse with time, leading to higher loss of jobs. In this respect the government has continued supporting reduction of excess staff in state corporations. It is clear that a privatised enterprise will not retain excess staff hence some of the staff will be retrenched. In this connection, as part of the proposal for privatization the Commission is required to submit recommendations for dealing with the employees directly affected by the proposed privatization, including dealing with any benefits they might be owed. The retrenchment package offered to the employees is aimed at enabling them to engage themselves in productive employment. With time the recovery of the privatised enterprises and the economy is expected to create more jobs creating more opportunities for the retrenched staff and other Kenyans.

#### **High tariffs**

3.6.3 Private sector investments normally seek higher returns on capital. Private sector also normally acquires debt (especially for finance of infrastructure facilities) at higher costs and for short periods of time due to perceived risks. Public sector also in many

cases provides service at below cost recovery tariffs, normally supported indirectly by the Government through various subsidies including debt write offs. In some cases privatization will lead to lower tariffs due to efficiency gains arising from the more efficient private sector operations. However in many cases, unless mitigation actions are taken by the Government, privatizations leads to higher tariffs as the private sector increases tariffs to cost recovery levels.

- 3.6.4 To ensure that there is no exploitation, in cases where adequate competition is not available or cannot be created efficiently, the Government will put in place a regulatory framework that protects the consumers. In addition the Government will continue to participate in risk mitigation schemes that cover the perceived political and sovereign risks and reduce the cost of project financing through lower interest and longer loan period. The Government will also continue to select privatization and public private partnership methods considered financially viable at the desired level of tariffs. The Anti Monopolies Commission will also continue dealing with any anti competitive practices.

## **Social economic objectives**

3.6.5 There are certain social economic objectives that are normally met by the Government through state corporations. Some examples are the provision of electricity and telecommunications to rural areas to facilitate development. Such services are normally provided at costs far below cost recovery levels and would therefore not be provided by private sector operator unless they are subsidized. Currently such costs, in the case of electricity are financed through the rural electricity levy and additional direct Government and donor financing while with regard to rural telephony, Government is in the process of putting a levy in place. For each privatization process submitted for approval the Commission should indicate the plan for continuing to provide services to meet the social economic objectives. However this would only be carried out to the extent to which the services are still considered core to the country's development subject to availability of resources to subsidize the services.

## **3.7 UTILIZATION OF PRIVATIZATION PROCEEDS**

3.7.1 The existing principles and guidelines relating to the privatization programme require that:

- (i) the proceeds from the sale of direct Government equity holding be placed in a special account at the Central Bank of Kenya and accounted for as receipts to the budget and used to reduce the Pay Master General's overdraft; and
- (ii) the proceeds from the indirect equity holdings (e.g. shares held by Development Finance Corporations) are deposited in interest bearing special accounts established by each of the holding companies at commercial banks and accounted for as receipts by the holding companies to protect erosion of their balance sheets.

3.7.2 The accounts held by the holding companies are to be operated jointly by the Corporation and the Permanent Secretary, Treasury. In order of priority the funds are to be applied to: -

- (i) liquidate external indebtedness especially the one relating to the investments to be sold;
- (ii) liquidate overdue debts owed by the holding company including those owed to the Treasury;

- (iii) contribute to the cost of safety net for the parastatal before privatization;
- (iv) be used towards cost of financial restructuring of the parastatals prior to divestiture; and
- (v) towards venture capital investments in new projects, with the approval of the Treasury.

1.1.1 The existing policy will remain. However, where privatization proceeds are considered to be in excess of the holding company's needs the Treasury will require the company to pay the excess funds to the Treasury in line with the provisions of the State corporations.

## **1 ANNEX 1**

### **1992 LIST OF NON - STRATEGIC COMMERCIAL ENTERPRISES TO BE PRIVATIZED**

1. African Diatomite Industries Limited
2. African Marine General Engineering Company Limited
3. African Tours and Hotels Limited
4. Agro-Chemicals and Food Corporation
5. Ark Limited
6. Associated Battery Manufacturers
7. Associated Vehicle Assembly Limited
8. Avon Export Limited
9. Avon Marketing Limited
10. Avon Rubber Company Limited
11. Bamburi Portland Cement Company Limited (Div)
12. Bomas of Kenya Limited
13. Booth Manufacturers Limited
14. Brollo Kenya Limited
15. Buffalo Springs Lodge Limited
16. Busia Hotel Limited
17. B.A.T Development (K) Limited (D)
18. Chebut Tea Factory Limited
19. Chemelil Sugar Company Limited
20. Chinga Tea Factory Limited
21. Chloride Exide (K) Limited
22. Clarkson Notcutt Limited
23. Consolidated Bank of Kenya Limited
24. C.M.B Packaging Limited (Ex Metal Box)
25. C.M.C Holdings Limited
26. C.P.C Industries Limited
27. Dawa Pharmaceuticals Limited
28. East Africa Industries Limited
29. East Africa Fine Spinners Limited
30. East African Oxygen (Kenya) Limited
31. East African Portland Cement Company Limited
32. East African Sugar Industries Limited
33. Embu Hotel Limited (Izaak Walton Inn)
34. Eslon Plastics of Kenya Limited
35. Everready Batteries Limited
36. ESA Bookshop Limited
37. Firestone (EA) Limited
38. Galana Game Ranching Limited
39. Game Lodges Limited
40. Gathuthi Tea Factory
41. Gatunguru Tea Factory Limited
42. General Motors (Kenya) Limited
43. Githambo Tea Factory Limited

44. Githongo Tea Factory Limited
45. Gitugi Tea Factory Limited
46. Golf Hotel Limited
47. Grindlays Bank International (K) Limited
48. Highlands Paper Mills Limited
49. Hola Ginnery Limited
50. Homa Bay Hotel Limited
51. Horti Seed Company Limited
52. Hotel Investors Limited
53. Hotel Span Limited
54. Housing Finance Corporation of Kenya
55. ICDC Investments Company Limited
56. Ikumbi Tea Factory Limited
57. Imenti Tea Factory Limited
58. Industrial Promotion Services Limited
59. Infusion Kenya Limited
60. International Hotels (K) Limited
61. Iriani Tea Factory Limited
62. Kabarernet Hotel Limited
63. Kagwe Tea factory Limited
64. Kambaa Tea Factory Limited
65. Kangatia Tea Factory Limited
66. Kanyenyani Tea Factory Limited
67. Kapkoros Tea Factory Limited
68. Kapsabet Tea Factory
69. Kebirigo Tea Factory Limited
70. Kenatco Taxis Limited
71. Kenchic Limited
72. Kencom House Limited
73. Kenya Airfreight Handling Company Limited
74. Kenya Airways Limited
75. Kenya Bixa Limited
76. Kenya Bowling Centres Limited
77. Kenya Breweries Limited
78. Kenya Cashew nuts Company Limited
79. Kenya Chemical & Food Corporation
80. Kenya Coffee Auctions Limited
81. Kenya Commercial Bank Limited
82. Kenya Commercial Finance Corporation
83. Kenya Cooperative Creameries Limited
84. Kenya Drilling Company Limited
85. Kenya Engineering Industries Limited
86. Kenya Fibre Corporation Limited ®
87. Kenya Film Corporation
88. Kenya Fishnet Industries Limited
89. Kenya Flamingo Airways Limited
90. Kenya Fluorspar Company Limited
91. Kenya Fruit Processors Limited

92. Kenya Furfural Limited (R)
93. Kenya Grain Growers Cooperatives Union
94. Kenya Horse Studs Limited (R)
95. Kenya Hotel Properties Limited
96. Kenya Industrial Plastics Limited
97. Kenya Meat Commission
98. Kenya National Assurance Corporation
99. Kenya National Capital Corporation
100. Kenya National Properties Limited
101. Kenya National Shipping Lines
102. Kenya National Trading Corporation
103. Kenya Peanut Company Limited
104. Kenya Reinsurance Corporation
105. Kenya Re-Properties Limited
106. Kenya Safari Lodges & Hotels Limited
107. Kenya Seed Drier's Company Limited
108. Kenya Shipping Agency Limited
109. Kenya Taltex Mills Limited
110. Kenya Tea Packers Company Limited (KETEPA)
111. Kenya Vehicle Manufactures (ex-layland)
112. Kenya Wine Agencies Limited
113. Kerio Valley Ginnery Limited
114. Kiamokama Tea Factory Limited
115. Kibos Ginnery Limited
116. Kiegoi Tea Factory Limited
117. Kimunye Tea Factory Limited
118. Kinoro Tea Factory Limited
119. Kisii Bottlers Limited
120. Kisumu Cotton Mills Limited (KICOMI)
121. Lands Limited
122. Lion Hill Camp Limited
123. Litein Tea Factory Limited
124. Loncom Limited
125. Makomboni Tea Factory Limited
126. Makueni Ginnery Limited
127. Malindi Fruit Processors Limited (D)
128. Maralal Safari Lodge Limited
129. Marsabit Lodge Limited
130. Mataara Tea Factory Limited
131. Mepal Plastics Limited
132. Meru Ginnery Limited
133. Meru Mulika Lodge Limited
134. Milimani Hotels Limited
135. Milling Corporation of Kenya Limited
136. Minet ICDC Insurance Brokers Limited
137. Mogogosiek Tea Factory Limited
138. Motor and Pedal Cycles Limited
139. Mountain Lodge Limited

140. Mt. Elgon Lodge Limited
141. Mt. Kenya Bottlers Company Limited
142. Mt. Kenya Textile Mills Limited (MOUNTEX)
143. Mumias Sugar Company Limited
144. Mungania Tea Factory Limited
145. Mutually Investment trust Limited
146. Mwea Ginnery Limited
147. Mwea Rice Mills Limited
148. Nairobi Oil Products Limited ®
149. Nakuru Chrome Tanning Company Limited (VL)
150. NAS Airport Services Limited
151. Nation Printers and Publishers Limited
152. National Bank of Kenya Limited
153. National Agricultural & Chemical Fertilizers Corporation (D)
154. Ndima Tea Factory Limited
155. Nestle Foods (K) Limited
156. Njunu Tea Factory Limited
157. Notcutt Longaroni Limited
158. Nyamanche Tea Factory Limited
159. Nyankoba Tea Factory Limited
160. Nyansiongo Tea Factory Limited
161. Nzoia Sugar Company Limited
162. Ogembo Tea Factory Limited
163. Pan Vegetable Processors Limited
164. Panafric Hotel Limited
165. Panafrican Paper Mills (EA) Limited
166. Pearl Drycleaners Limited
167. Pollman's Tours and Safaris Limited
168. Polysynthetic EA. Limited
169. Ragati Tea Factory Limited
170. Raymond Woollen Mills
171. Rift Valley Bottlers Limited
172. Rift Valley Textile Mills (RIVATEX)
173. Robinson Hotels (Msa) Limited
174. Rukiriri Tea Factory Limited
175. Safari Lodges & Properties (K) Limited
176. Salt Manufacturers (K) Limited
177. Sanganyi Tea Factory Limited
178. Sanyo Armco Limited
179. Savings and Loan (K) Limited
180. Seracoatings Kenya Limited ®
181. Simpson and Whitewall Limited
182. Sirikwa Hotel (Kenya) Limited
183. Sokoro Fibre Boards Limited
184. Sonotels (K) Limited
185. South Nyanza Sugar Company Limited
186. Sunset Hotel Limited
187. Synthetic Fibre (K) Limited

188. Tegat Tea Factory Limited
189. The Tea Hotel Limited
190. Theta Tea Factory Limited
191. Thika Cotton Mills Limited
192. Thumaita Tea Factory Limited
193. Tiger Shoes Company Limited ®
194. Tombe Tea Factory Limited
195. Tourism Promotion Services
196. Town Properties Limited
197. Transport and Tourism Services Limited
198. Uchumi Supermarkets Limited
199. United Finance Company of Kenya
200. Uplands Bacon Factory Company Limited
201. Utalii Investments Company Limited
202. Wananchi Saw Mills Limited
203. Warehouse & Forwarding Limited (WAFCO)
204. Wedco Limited
205. Wire Products Limited
206. Yuken Textiles Limited ®
207. Y – Fashions Limited

**NOTE**    ®    - **In Receivership**  
          (D)    - **Dormant Company not trading**  
          (Div) - **Divested**

## 2 ANNEX 2

### **1992 LIST OF STRATEGIC COMMERCIAL ENTERPRISES TO BE RESTRUCTURED AND RETAINED IN THE PUBLIC DOMAIN**

1. Agricultural Development Corporation
2. Agricultural finance Corporation
3. Development Finance Company of Kenya
4. Development House Limited (AFC)
5. East African Development Bank
6. Industrial Development Bank of Kenya Limited
7. Industrial & Commercial Development Corporation
8. Jomo Kenyatta Foundation
9. Kenya Broadcasting Corporation
10. Kenya Industrial Estate limited
11. Kenya Literature Bureau
12. Kenya Petroleum Oil Refineries
13. Kenya Pipeline Company Limited
14. Kenya Ports Authority
15. Kenya Post Office Savings Bank
16. Kenya Posts & Telecom. Corporation
17. Kenya Power Company
18. Kenya Power & Lighting Company
19. Kenya Railways Corporation
20. Kenya Seed Company limited
21. Kenya Tea Development Agency
22. Kenya Tourist Development Corporation
23. Kenya Veterinary Vaccine Production Institute
24. National Cereals & Produce Board
25. National Housing Corporation
26. National Oil Corporation of Kenya
27. Nyayo Bus corporation
28. Nyayo Tea Zones Development Authority
29. Post Bank Credit Limited
30. Rehabilitation Advisory Services Limited
31. School Equipment Production Unit
32. Small Enterprise Finance Company (SEFCO)
33. Tana River Development Company Limited

**ANNEX 3  
DECEMBER 2002 LIST OF PRIVATIZED ENTERPRISES**

**A. LIQUIDATIONS**

	<b>Company</b>	<b>Year</b>	<b>Public Share Before (%)</b>	<b>Public Share After (%)</b>	<b>Sector</b>	<b>Buyer</b>	<b>Proceeds</b>
1	Nakuru Chrome Tanning Co. Ltd.	1992	20	0	Leather	Voluntary Winding Up	800,000
2	Kenya Peanut Co. Ltd	1992	46	0	Agro-processing	-	-
3	Kenya Horse Studs Ltd	1992	50	0	Livestock	-	-
4	Kenatco Transport Ltd	1992	100	0	Transport	-	-
5	Horti Seed Kenya Ltd	1992	100	0	Agriculture	-	-
6	Seed Drier's Ltd	1992	100	0	Agriculture	-	-
7	Simpson & Whitelaw Ltd	1992	100	0	Agriculture	-	-
8	BAT development (K) Ltd	1993	20	0	Poultry	-	-
9	Town Properties Ltd	1994	100	0	Services	-	-
10	Motor & Pedal Ltd	1995	40	0	Transport	F.X.Co. Ltd	500,000
11	Uplands Bascon Factory Ltd	1995	100	0	Agro-processing	-	-
12	Kenya Film Corporation	1995	100	0	Entertainment	-	-

**B. RECEIVERSHIPS**

	<b>Company</b>	<b>Year</b>	<b>Public Share Before (%)</b>	<b>Public Share After (%)</b>	<b>Sector</b>	<b>Buyer</b>	<b>Proceeds (Kshs)</b>
1	Nairobi Oil Products Ltd	1992	29	0	Oil Recycling	Various individual	8,750,000
2	Tigers Shoes Ltd	1993	16.7	0	Leather	Lento Agencies	9,000,000
3	Yuken Textiles Ltd	1993	100	0	Textile	Yuken Mills Ltd	14,000,000
	<b>Company</b>	<b>Year</b>	<b>Public Share Before (%)</b>	<b>Public Share After (%)</b>	<b>Sector</b>	<b>Buyer</b>	<b>Proceeds</b>
4	Sirikwa Hotel Ltd	1993	21	0	Tourism	Akamba Invest Ltd	70,000,000
5	Kenya Drilling Co. Ltd	1993	100	0	Services	Kenatco Taxis Ltd & Various	21,700,000

						Individuals	
6	Kisumu Cotton mills Ltd	1993	80	0	Textiles	Caneland Ltd	174,961,000
7	Seracoating Kenya Ltd	1994	34	0	Plastics	Local Shareholders	82,000,000
8	Pan Vegetable Processors Ltd	1994	100	0	Agri-processing	Homegrown (K) Ltd	95,000,000
9	Kenya Taitex Mills Ltd	1995	81	0	Textiles	Kifaru mills Ltd	81,000,000
10	Kenya Furfural Co. Ltd	1995	51	0	Chemical	Various Shareholders	55,800,000
11	Kenya Engineering Industries Ltd	1995	50	0	Engineering	Ashut Engineers Ltd	52,505,555
12	Synthetic Fibres Kenya Ltd	1995	100	0	Textile	Sunrise Textile Mills Ltd	50,000,000
13	East African Fine Spinners Ltd	1995	74	0	Textile	Bedi Inves. Ltd	282,000,000*
14	Kenatco Taxis Ltd	1996	100	0	Transport	-	

\*This figure will increase by the value of inventories.

### C. PRE-EMPTIVE RIGHTS

	Company	Year	Public Share Before (%)	Public Share After (%)	Sector	Buyer	Proceeds (Kshs)
1	Tea Hotel Kericho **	1991	60	0	Hotel & Tourism	Sololo Invest. Ltd	15,000,000
2	Highland Paper mills Ltd	1992	17	0	Pulp & Paper	Shareholders	875,000
3	Y-Fashions Ltd	1993	75	0	Textiles	Shareholders	4,000,000
4	Panafric hotel Ltd	1993	31	0	Hotel & Tourism	Sarova Hotels Ltd	63,855,000
5	Robinson Baobab Hotel Ltd	1993	10	0	Hotel & Tourism	Robinson Hotels Intl	50,234,274
6	Avon Marketing Ltd	1993	18	0	Services	Existing Shareholders	8,078,400
7	Avon Rubber Co. Ltd	1993	20	0	Rubber	Existing Shareholders	11,949,470
8	Avon export Ltd	1993	14	0	Services	Existing Shareholders	55,000
9	Nestle Foods (K) Ltd	1993	13	0	Food & Beverages	Nestle S.A of Switzerland	18,347,750
10	Pollman's Tours & Safaris Ltd	1993	49	0	Tourism	Touristik Union Intl	25,024,895

11	Salt Manufacturers Kenya Ltd	1993	56	0	Chemical	Saltec International	43,922,724
12	Kenchick Ltd	1993	12	0	Poultry	NAS Airport Services, Credit Finance Corp. Mawara Investment	4,600,000
13	Firestone (EA) Ltd	1994	20	0	Rubber	Sameer Invest. Ltd	100,000,000
14	Chloride oxide (K) Ltd	1994	18	0	Services	NAS Holdings	5,154,125
15	Associated Battery Manuf. Ltd	1994	20	0	Automobiles	NAS Holdings	28,141,200
16	Kenya Fishnet Industries Ltd	1994	43	0	Textiles	Afro Meat Ltd	2,418,750
17	CPC Industries Producers Ltd	1994	18	0	Agri-Processing	CPC International	29,523,530
18	Kenya Cashewnut Ltd	1994	76	0	Agri-Processing	Kilifi District Co-op Union	78,203,446
19	African Marine & Engineering Co. Ltd	1994	33	0	Engineering	First Chartered Securities	30,712,500
20	Sanyo Armco Ltd	1995	34	0	Electronics	Former Employees Sanyo Electric Co. of Japan	2,251,080
21	Booth Manufacturing (A) Ltd	1995	29	0	Engineering	Kenya Aluminum Industries Ltd	9,993,060
22	Wire Products Ltd	1995	30	0	Engineering	Industrial Promotion Services	8,336,250
23	Carnaud Metal Box Ltd	1995	19	0	Packaging	C.M.B of UK	39,188,000
24	Kenya Bixa Ltd	1995	51	0	Food & Beverage	Kenya Plantations & Products	35,598,000
25	Sokoro Fireboard Ltd	1995	26	0	Timber	Other Shareholders	22,007,700
26	Embu hotel Ltd	1995	29	0	Tourism	Other Shareholders	3,117,690
27	Kenya Bowling Centres	1995	26	0	Entertainment	Other Shareholders	3,220,000
28	Lion Hill Camp	1995	30	0	Hotel & Tourism	Sarova Hotels Ltd	14,500,000
29	Kenya Fruit Processors Ltd	1995	35	0	Agri-Processing	Passi Ltd	8,645,000
30	NAS Airport Services Ltd	1995	27	0	Services	Other Shareholders	62,920,000
31	Elson Plastics	1995	17	0	Plastics	Other	

32	Associated Vehicle assemblers	1996	51	0	Vehicle Assembly	Shareholders Kenya Motor Handling Co. Ltd & Marshalls E.A Ltd	154,336,000*
33	Wananchi Sawmills Ltd		45	0	Saw Milling	Other Shareholders	15,444,707*
34	Brollo Kenya Ltd	1996	10	0	Steel Rolling	Zambezi Establishment	35,666,631*
35	Kenya Shipping Agency Ltd	1996	80	0	Transport	Southern Credit Finance Ltd	38,416,000
36	Kenya Industrial Plastics Ltd	1996	33.3	0	Plastic	Caramel Chemicals	4,224,438*
37	Raymond Woolen Mills	1996	11	0	Textile	Other Shareholders	94,023,438
38	Kenya National Properties	1997	34.1	0	Real Estate	ICDC Investment Co.	124,850,000
39	Polysynthetic E.A	1997	30	0	Chemical	Hoechst E. A	50,289,030
40	Dawa Pharmaceuticals	1997	40	0	Pharmaceuticals	Other Shareholders	4,988,382
41	General Motors	1997	51	20	Motor vehicle	Other Shareholders	333,492,750
42	Minet ICDC Insurance Brokers Ltd	1997	47	26	Insurance	Other Shareholders	21,275,880
43	East Africa Industries Ltd (EAI)	1997	29	20		Other Shareholders	200,214,975
44	Eveready Batteries Kenya Ltd	1997	24.87	20.87	Battery	Other Shareholders	23,041,200
45	Milimani Hotel Ltd	1997	49.12	0	Hotel Industry	Other Shareholders	80,010,000
46	Warehousing & Forwarding Company	1997	25	0	Clearing & Forwarding	Other Shareholders	2,437,360
47	Kenya National Shipping Lines Ltd	1997	70	45.12	Shipping	Mediterranean Shipping Company	-
48	Infusion Kenya Ltd	1997	13	0	Pharmaceutical	Ever Investment Co	8,000,000
49	Stanbic Kenya Ltd	1997	40	23	Banking	Sinclair (SBIC)	Share Dilution
50	Maralal Lodge	1997			Tourism	Other Shareholders	-
51	Kenya Vehicle Manufacturers Ltd	1997	35	0	Automobile	Other Shareholders	57,750,000
52	Mount Kenya Bottlers Ltd	1997			Bottling	Other	-

53	Kisii Bottlers	1997	26.1		Bottling	Shareholders Other Shareholders	23,848,470
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\*\* Pre-programme transactions

\* Price still under negotiations (this is the offer price)

#### D. PUBLIC FLOATATIONS

	Company	Year	Public Share Before (%)	Public Share After (%)	Sector	Buyer	Proceeds (Kshs)
1	Bamburi Portland Cement Co. Ltd*	1991	26		Mining	NSSF	-
2	E.A. Oxygen Ltd	1993	15	0	Chemical	Various Investors	42,472,080
3	CMC Holdings	1993	20	0	Services /Vehicles Assembly	Various Investors	20,074,810
4	National Bank of Kenya	1994	(1 <sup>st</sup> issue – 100)	42.5	Banking	Individuals & Other Investors	400,000,000
5	Kenya National Capital Corporation#	1996	(2 <sup>nd</sup> issue – 42.5)	22.5	Banking	Individuals & Other Investors	600,000,000
6	Kenya Airways	1996	100 (GoK)	20	Transport	Individuals & Institutional Investors	2,643,750,000 + US\$ 26 Million
7	Kenya Airfreight Handling Co. **						
8	Kenya Flamingo Airways#						
9	Mumias Sugar Company#	2001	70.76	38.13	Agriculture	Individuals & Sugar growers	954,936,425

\*\* Pre-programme transactions

# Kenya Airways subsidiaries

#### E. COMPETITIVE BIDDING

	Company	Year	Public Share Before (%)	Public Share After (%)	Sector	Buyer	Proceeds (Kshs)
1	ESA Bookshop	1993	49	0	Services	Mr. N.M. Rajani	75,000
2	Mutually Investment Trust (Golden	1993	100	0	Hotel & Tourism	-	-

	Beach Hotel)						
3	African Diatomite Industries Ltd	1994	100	0	Mining	Crown Berger Kenya Ltd	45,000,000
4	MEPAL plastics Kenya Ltd	1994	100	0	Plastics	Minolta Ltd	17,000,000
5	Milling Corporation of Kenya Ltd	1994	100	0	Agri-Processing	Premier Flour Mills Ltd	150,000,000
6	Hola Cotton Ginnery	1995	100	0	Textile	Malindi Cotton Ginneries Ltd	10,000,000
7	Salawa Cotton Ginnery	1995	100	0	Textile	Kerio Farms	10,000,000
8	Mwea Cotton Ginnery	1995	100	0	Textile	Rift Valley Products Ltd	15,000,000
9	Homa Bay Hotel Ltd	1995	99	0	Hotel & Tourism	Samvir Management Services Ltd	22,000,000
10	Golf Hotel	1995	80	0	Hotel & Tourism	Buvika Corporation Ltd	70,000,000
11	Meru Ginnery	1995	49	0	Textile	Mugongai Farmers Ltd	30,000,000
12	Kenya Fluospar Co. Ltd	1996	50		Mining	M/s Mineral & Chemicals Manufacturers Ltd (In Formation0	72,500,000
13	Sunset Hotel Ltd	1996	95	0	Hotel & Tourism	Travel Handling services Ltd	115,000,000
14	Kibos Cotton Ginnery	1996			Cotton Ginning	Salome Farmers Group	8,000,000

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#### 4 F. MANAGEMENT / EMPLOYEE BUYOUT

	Company	Year	Public Share Before (%)	Public Share After (%)	Sector	Buyer	Proceeds (Kshs)
1	Ark Ltd	1996				Utalii Staff Investments Co. Ltd	8,500,000

Price being negotiated

## F. PARTIAL DIVESTITUTRES

	<b>Company</b>	<b>Year</b>	<b>Method of Privatization</b>	<b>Public Share Before (%)</b>	<b>Public Share After (%)</b>	<b>Sector</b>	<b>Buyer</b>	<b>Proceeds (Kshs)</b>
1	Kenya Commercial Bank Ltd** (a) Kencom House Ltd# (b) Kenya Commercial Finance Corporation# (c) United Finance Company of Kenya# (d) Notcutt Longaroni# (e) Savings & Loans Kenya Ltd# (f) Investment Promotion Services#	1998/90 /97/98  1998 (GoK)	Public	100	35	Banking	Individuals & Other Investors	447,000,000  + 594,000,000  + 1,820,000,000
2	Mt. Kenya Textile Mills	1992	Receivership	100	48.5	Textile	DFCK & DEG	Share Dilution
3	Uchumi Supermarkets Ltd	1992 (ICDC)	Public Floatation	90	44	Retail Trading	Individuals & other investors	232,000,000
	<b>Company</b>	<b>Year</b>	<b>Public Share Before (%)</b>	<b>Public Share After (%)</b>	<b>Sector</b>	<b>Buyer</b>	<b>Proceeds</b>	
4	General Motors (K) Ltd	1992 (IDB)	Pre-emptive rights	51	46.5	Vehicle assembly	ITOH & ICDC Investment	Share Dilution
5	Housing Finance Company of Kenya	1992 (GoK)	Public Floatation	50	30	Housing Finance	Individuals & other investors	126,000,000

\*\* Pre-programme transaction

# Subsidiaries and associated companies

## ANNEX 4:

### REVISED LIST OF STRATEGIC COMMERCIAL ENTERPRISES TO BE RETAINED UNDER GOK OWNERSHIP

#### **A. Development Finance Institutions \***

1. Agricultural Finance Corporation (AFC)
2. **Industrial and Commercial Development Corporation**
3. **Kenya Tourist Development Corporation (KTDC)**
  4. **Kenya Industrial Estate Limited**
  5. **East African Development Bank**

#### **B. OTHER COMMERCIAL DEVELOPMENT ORIENTED STATE CORPORATIONS**

1. **National Housing Corporation**
2. **Agricultural Development Corporation**
3. **Kenya Post Office Savings Bank**
4. **Kenya Broadcasting Corporation (KBC)**
5. **Jomo Kenyatta Foundation**
6. **Kenya Literature Bureau**
7. **Kenya Veterinary Vaccine Production Institute (KEVEVAPI)**
8. **School Equipment Production Unit (SEPU)**
9. **National Cereals & Produce Board.**

Notes: \*The Ministry of finance has initiated a comprehensive review of the DFIs. This review has indicated that a strategy for increasing access to credit to support development objectives which relies only on commercial lenders is not adequate to meet Kenya's present need for increasing access to credit. The review recommended, among other things, the need to: reduce the number of government owned DFIs; redirect DFI activities to areas, which are relatively poorly served by commercial lenders (agricultural development loans, small farmer crop loans and small enterprise development loans especially in start up situations); and to improve the DFI's corporate governance. Based on this initial review, the Ministry of Finance is currently developing a DFI strategy. Meanwhile the DFIs (or their functions) will continue to operate under Government ownership and control.

## 5 ANNEX 5

### 6 SHAREHOLDING IN COMMERCIAL ENTERPRISES

1. Agro Chemical and Food Corporation – (ADC: 28.2%; ICDC: 28.8%)
2. Chemelil Sugar Company – (GOK thro' ADC: 96.21%; DBK: 1.42%)
3. South Nyanza Sugar Company – (GOK: 98.8%; ICDC:0.7%; IDB:0.3%)
4. Mumias Sugar Company – (GOK: 38.04%)
5. Kenya Coffee Auctions Limited – (Coffee Board of Kenya: 65%)
6. Mwea Rice Mills – (National Irrigation Board: 55%)
7. Nzoia Sugar Company – (GOK: 97.93%)
8. Kenya Seed Company – (ADC: 52% - 1990; 40% -2002)
9. Pyrethrum Board of Kenya (commercial function) - 100% GOK owned.
10. Western Kenya Rice Mills Limited – (National Irrigation Board: 71.9%; Ahero, Bunyila and West Kano irrigation schemes: 14.01%, 6.83% and 7.27%, respectively)
11. Kenya Commercial Bank – (GOK: 26.2%) and subsidiaries :Kencom House Limited
12. Development Bank of Kenya - (ICDC: 89.3%)
13. Consolidated Bank – (Deposit Protection Fund: 50.2%; State Corporations: 47.9%;Local Authorities 0.6% )
14. Kenya Reinsurance Corporation – (GOK: 100%)
15. Wananchi Sawmills Limited – (ICDC: 44.4%)
16. Kenya National Trading Corporation – (ICDC: 100%)
17. Funguo Investments Company Limited – (ICDC: 36.5%)
18. Kenya Wine Agencies – (ICDC: 72.66%)
19. Kenya Power and Lighting Company – (GOK:40.41%; NSSF: 10.81%)
20. Kenya Electricity Generating Company – (GOK: 100%)
21. Kenya Railways Corporation – (100% GOK owned)
22. Kenya Petroleum Refineries Limited – (GOK: 50%)
23. Kenya Pipeline Company – (GOK: 100%)
24. National Oil Corporation: (GOK: 100%)
25. Kabarnet Hotel Limited – (KTDC:98%)
26. Mt. Elgon Lodge – (KTDC: 72.92%; Kitale Municipal Council: 13.54%; Transzoia County Council: 13.54%)
27. Telkom Kenya – (100%)
28. Safaricom Limited – (Telkom Kenya: 60%)
29. Industrial Development Bank – ( GOK 58.2%, ICDC 12.1%, State Corporations 29.7%)
30. Golf Hotel limited – (KTDC:80%; Kakamega Municipal Council: 20%)
31. Sunset Hotel Limited – (KTDC: 95.4%; Kisumu City:4.6%)
32. Kenya Safari Lodges and Hotels Limited – (KTDC:63.42%; KWS:0.02%)
33. Kenya National Shipping Line – (KPA: 70% reduced to 44% but shares not issued)
34. East African Portland Cement Company Limited - (NSSF: 27%; GOK: 27%)
35. Eveready Batteries Limited - (ICDC – 24.87%)
36. General Motors (Kenya) Limited - (ICDC – 20%)
37. Housing Finance Corporation of Kenya - (GOK: 7.3%)
38. ICDC Investments Company Limited - (ICDC: 23.5%)
39. Industrial Promotion Services Limited - (GOK: 5 shares only)
40. International Hotels (K) Limited - (Hilton, Nairobi) – (KTDC: 33.1%)

41. Kenya Airways Limited - (23%); and subsidiaries - Kenya Flamingo Airways Limited and Kenya Airfreight Handling Company Limited
42. Kenya Breweries Limited (0.95%)
43. Kenya Grain Growers Cooperatives Union – (2% ADC shareholding)
44. Kenya Hotel Properties Limited (Hotel Intercontinental, Nairobi) – (KTDC:33.8%)
45. Kenya National Assurance (2001) Ltd – (GOK: 100%).
46. Kenya Vehicle Manufactures (ex-layland) – (GOK: 35%)
47. Kisii Bottlers Limited - (ICDC: 29.25)
48. Mountain Lodge Limited - (KTDC: 39.7%)
49. Mt. Kenya Bottlers Limited – (ICDC: 19%; IDB: 2.8%)
50. Nyayo Tea Zones – (GOK: 100%)
51. Panafrican Paper Mills (EA) Limited – (GOK: 34%; ICDC: 6% & DBK: 2%)
52. Rift Valley Bottlers Limited – (ICDC: 29%)
53. Simba Products Limited – (ICDC: 100%)
54. Thika Cloth Mills Limited – (IDB: 5.8%)
55. Uchumi Supermarkets Limited – (ICDC: 32%)
56. Kenya Airports Authority – (GOK: 100%)
57. African Export Import Bank – (IDB: 0.3%)
58. Acacia Fund Limited – (IDB: 0.3%)
59. Aon Minet Company Limited – (ICDC: 20%)

## **7 ANNEX 6**

### **AREAS IDENTIFIED FOR PUBLIC PRIVATE PARTNERSHIPS**

1. Kenya Ports Authority
2. Kenya Railways Corporation
3. Kenya Airports Authority
4. Mombasa –Malaba road

## ANNEX 7

### LIST OF NON-COMMERCIAL STATE CORPORATIONS

#### **8 A. Regulatory**

1. Betting Control and Licensing Board
2. Capital Markets Authority
3. Central Agricultural Board
4. Coffee Board of Kenya
5. Electricity Regulatory Board
6. Export Processing Zones Authority
7. Cotton Board of Kenya
8. Film Censorship Board
9. Horticultural Crops Development Authority
10. Hotels and Restaurants Authority
11. Kenya Bureau of Standards
12. Kenya Dairy Board
13. Kenya Plant Health Inspectorate Services
14. NGO Coordination Bureau
15. Pests Products Control Board
16. Pharmacy and Poisons Board
17. Pyrethrum Board of Kenya (has some financial functions)
18. Radiation Protection Board
19. Sisal Board of Board (has some financial functions)
20. Tea Board of Kenya
21. Kenya Tea Development Authority
22. Communications Commission of Kenya
23. Presidential Commission on Soil Conservation
24. Kenya Sugar Authority
25. National Environment Management Authority

#### **9 B. Research institutes**

1. Coffee Research Foundation
2. Kenya Agricultural Research Institute
3. Kenya Forestry Research Institute
4. Kenya Industrial & Research Development Institute
5. Kenya Institute for Public Policy Research & Analysis
6. Kenya Marine and Fisheries Research Institute
7. Kenya Medical Research Institute
8. Kenya Trypanosomiasis Research Institute
9. Tea Research foundation
10. Kenya Veterinary vaccines Production Institute

**10**

#### **11 C. Educational/Professional**

1. Cooperative College of Kenya
2. Council of Legal Education
3. Egerton University
4. Higher Education Loans Board
5. Jomo Kenyatta University of Agriculture and Technology
6. Kenya Institute of Administration
7. Kenya Medical Training Center
8. Kenya National Examinations Council
9. Kenya Utalii College
10. Kenyatta University

11. Moi University
12. University of Nairobi
13. National Council for Science and Technology
14. Maseno University

**12 D. Development/Promotional agencies**

1. Cost Development Authority
2. Ewaso Ng'iro North River Basin Development Authority
3. Ewaso Ng'iro South River Basin Development Authority
4. Kerio Valley Development Authority
5. Lake Basin Development Authority
6. National Irrigation Board
7. Tana Athi Rivers Development Authority
8. Export Promotion Council
9. Investment Promotion Center
10. Kenya Tourism Board
11. Kenya Wildlife Service

**13 E. Culture/Social service**

1. Kenya National Library Services
2. Kenyatta National Hospital
3. Local Authorities Provident Fund
4. Moi Referral and Teaching Hospital
5. National Health Insurance Fund
6. National Social Security Fund
7. Presidential Music Commission
8. Bomas of Kenya Ltd.
9. National Museums of Kenya
10. National Aids Control Council

**14 F. Revenue collection**

1. Catering Levy Trustees
2. Kenya Revenue Authority