

REPORT OF THE AUDITOR-GENERAL ON TOURISM FUND FOR THE YEAR ENDED 30 JUNE 2017

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Tourism Fund set out on pages 1 to 29, which comprise the statement of financial position as at 30 June 2017, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Tourism Fund as at 30 June 2017, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Tourism Act, No.28 of 2011.

In addition, as required by Article 229(6) of the Constitution, except for the matters described in the Basis for Qualified Opinion section of my report, based on the audit procedures performed, I confirm that nothing else has come to my attention to cause me to believe that public money has not been applied lawfully and in an effective way.

Basis for Qualified Opinion

1. Receivables from Non-Exchange Transactions

- i. As reported in the previous year, the receivables from non-exchange transactions balance of Kshs.50,647,773 as at 30 June 2017 excludes an amount of Kshs.16,617,045 relating to dishonored cheques brought forward from the previous year for various levy collections for which a provision of the total amount has been made in the financial statements. The Fund was since enjoined in the Winding up case No.1 of 2005 in the High court of Kenya at Mombasa against the creditor in pursuit of a debt of Kshs.9,500,000. In a ruling made on 19 June 2014 the court ruled that the creditor be wound up and an official receiver was appointed as provisional liquidator. Although the creditors' meetings are ongoing, the outcome is yet to be determined.
- ii. Further, the receivables balance includes an amount of Kshs.2,344,617 described as other debtors which had no movement during the year under audit. Although management has explained that the debtors relate to former employees and that the same has been fully provided for, no satisfactory explanation was

given as to why the management did not recover the dues from the former employees before they left the Fund.

In the circumstances, it has not been possible to confirm that receivables from non-exchange transactions balance of Kshs.50,647,773 as at 30 June 2017 is fairly stated.

2. Proposed Office Block

Included in the property, plant and equipment balance of Kshs.1,843,887,018 as at 30 June 2017 is an amount of Kshs.1,371,998,165 being work in progress for construction of the Fund's office block that was still ongoing by the time of the audit. However, examination of the contract agreement revealed that the intended completion date for the construction work was 30 November 2012 and the original contract sum was Kshs.811,717,150. No approval for project extension period was given after expiry of the initial contract duration.

According to the financial appraisal No.5 dated November 2015, the projected revised contract price is Kshs.1,415,281,613, with a variation of Kshs.603,564,463 (about 74.36%) from the original contract price. However, approval of the financial appraisal as per Section 139 of the Public Procurement and Asset Disposal Act, 2015 was not provided for audit confirmation.

Consequently, the propriety of the anticipated expenditure of Kshs.603,564,463 without appropriate approval and the uncertainties underlying the project implementation cannot be confirmed.

3. Ronald Ngala Utalii College

- i. The College had been initially established as Kenya Utalii College, Coast branch vide Cabinet Memo Ref: CAB.58/4A of 18 September 2007 at REA Vipingo site on 60 acres of land donated by REA Vipingo Plantations Ltd. However, out of the total acreage only 40 acres has been fenced leaving the other 20 acres exposed to the risk of encroachment.
- ii. The development of the College was transferred to Catering and Tourism Development Levy Trustees (now Tourism Fund) from Kenya Utalii College and a process began to change and legalize the college name to Ronald Ngala Utalii College without Cabinet approval. By a Gazette Notice No. 3478 of 25 March 2010, the then Tourism Minister established Ronald Ngala Utalii Academy and which was now different from the envisaged name of the "College" and further appointed board members of the Academy through Gazette Notices of 6 August 2010 and 5 November 2010. However, these appointments were in 2012 nullified alongside those of other Tourism Agencies by the subsequent Minister for Tourism. In view of the change of name from Ronald Ngala Utalii College to Ronald Ngata Utalii Academy there are uncertainties as to the name the new title deed will be registered in.
- iii. No feasibility study was done for the project to establish its viability. The procurement plan of the procuring entity did not capture the estimated cost of the

project nor in the multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005 and Section 12 of the Public Finance Management Act, 2012.

- iv. No evidence has been availed to prove that the procurement process for the consultancy started with expression of interest as envisaged by Section 78 of the Public Procurement and Disposal Act, 2005. Further there is no proof that the tender committee approved use of request for proposal method without going through the expression of interest.
- v. The tender evaluation committee included two members from consortium of consultants procured (Baseline-Architect and Ujenzi-Quantity Surveyor) who were responsible for designing and drawing of Bills of Quantities which was in contravention of Section 26(3)(c) of the Public Procurement and Disposal Act, 2005 on segregation of duties and Section 28 of the same Act on appointment of procuring agent.
- vi. The tender for consultancy services was awarded to Baseline Architects Limited and the award was based on the technical proposal submitted by the winning firm, who were to be invited for negotiation on the basis of scale of fees for professional services. It is not clear whether the procuring entity indeed negotiated as provided for by request for proposal document with the consultants taking into consideration that the negotiation of award was done on 4 April 2012 which was the same day the tender was awarded. The award letter did not also specify the scale of fees applicable for professional services and the tender document was silent on how the consultants were to be paid. Baseline Architects Ltd. consortium included Geomeasures Surveyors Ltd whose bid was not evaluated and was one of the contracted consultants. Consequently, it has not been possible to ascertain the fairness of the evaluation process.
- vii. The award of the construction project contract was made to the third lowest prequalified bidder Ms Mulji Devraj and Brothers at a contract cost of Kshs.8,961,370,998. It is not clear why the contract was not awarded to the lowest bidder (M/S China Jiangxi International K Ltd) since there was a material difference of Kshs.498,731,291 yet all the bidders had undergone evaluation and prequalification.
- viii. On the 10 March 2016, Baseline Architects Limited presented fee note No.9 for architectural services of Kshs.208,780,092. Included in the total amount is out of pocket expense of Kshs.44,953,350, for which no supporting documents were provided for audit verification on this consultancy. On 8 September 2015, Ujenzi Consultants presented a fee note No.3 for quantity surveying services of Kshs.242,971,448. Included in the amount is reimbursements of Kshs.7,196,378 for which the consultant did not provide the supporting documents as per Section 139(2)(d) of Public Procurement and Asset Disposal Act, 2015.

- ix. Ms Central Electricals International Limited was issued with an advance payment guarantee for Kshs.38,952,592 by Imperial Bank Limited. However, the bank went into receivership in October 2015 and the consultant did not get another guarantor in contravention of Public Procurement and Asset Disposal Act, 2015 Section 147(1).
- x. The contract was revised on 25 August 2014 vide second addendum which scaled down the contract sum from Kshs.8,961,370,998 to Kshs.4,923,005,000. However, no cabinet approval has been availed to confirm this revised scope of the project.
- xi. During the year under review, National Treasury transferred Kshs.562,000.000 whereas the Fund incurred Kshs.629,984,854 on the project. Further, the main contractor's interim certificates still reflect a contract sum of Kshs.8,961,370,998 in spite of the scaled down activities.
- xii. According to monthly progress report No. 43 of February 2018, the certified gross value of work done together with advance payment, materials on site plus contractual claims was approximately Kshs.2.646 billion representing approximately 53.75% completion. Total payments made in respect of the project so far amount to Kshs.4,981,554,505 as at 30 June 2017. Most tasks are behind schedule and the updated programme of works shows a finish date of 25 March 2019.
- xiii. As previously reported, the amount of Kshs.1,536,015,714 charged by consultants of the project was based on the original contract sum of Kshs.8,961,370,998 (representing about 17.1%) yet the contract had been scaled down to Kshs.4,923,005,699 as per revised bill of quantities which should be Kshs.841,833,975 resulting in an overpayment to the consultants by Kshs.694,181,739.
- xiv. During the year under review, the Fund paid Kshs.7,959,600 to Kilifi County Government being land rates for Ronald Ngala Utalii College. It was however noted that M/s Kithi and Company Advocates had been engaged to negotiate on the outstanding land rates with Kilifi County Government in August 2013. The lawyer was paid Kshs.13,000,000 excluding fees on 9th September 2014 and the rates clearance certificate was to be obtained within 30 days from the date of payment. On 10 October 2016 the lawyer wrote to the Fund to request for an additional Kshs.10,000,000 towards finalizing the same which the Fund did not honour. The Fund's efforts to get a refund of the Kshs.13,000,000 have not yielded any fruits. The value for money from legal fees paid could not be ascertained and the Fund has not recognized the lawyer as a debtor for the 13 million in their books.
- xv. According the Public Financial Management Act, 2012 Section 72 (1)(a), the accounting officer for a national government entity shall be responsible for the management of the entity's assets and liabilities. However, a review of the

financial statements showed the Fund has been expensing grants to Ronald Ngala Utalii College project. However, an enquiry showed that Ronald Ngala Utalii College is non-existent hence the work-in progress has not been captured in any entity's books. Given that Tourism Fund implements and Funds the project and any liability thereof belongs to the Fund, the corresponding asset also needs to be recognized.

- xvi. On 27 June 2017 Mulji Devraj & Brothers presented interim certificate No. 22 of Kshs.69,698,562.96. Included in the amounts is interest on delayed payments Kshs.98,250,000, price fluctuations of Kshs.75,000,000 and other contractual claims of Kshs.281,750,000. It was however noted that the main contractor included Kshs.75,000,000 as price fluctuations in fee note number 22 without a detailed assessment on what caused the price fluctuation contrary to Clause 35 of the terms and conditions of the contract. According to the agreement and conditions of contract for building works between Tourism Fund and Mulji Devraj and Brothers Ltd clause 34.28, any penalties or fines imposed on the contractor by the relevant authority for delay in the payment of Value Added Tax(VAT) and other taxes levied in the building industry arising from a delay in the honouring of a payment certificate shall be reimbursed by the employer to the contractor. It was however noted that the contractor charged interest on VAT without evidence that the same had been charged by the Kenya Revenue Authority. Similarly, on 27 June 2017 the Armitech Consulting Engineers presented a fee note No.20 of Kshs.215,373,242 which included disbursements of Kshs.7,444,005 cumulated interest on outstanding pre and post contract fees of Kshs.178,193,025 and VAT on cumulated interest on outstanding fees of Kshs.28,510,884.
- xvii. According to IPSAS 11 (51) an entity should disclose the aggregate amount of costs incurred and recognized surpluses (less recognized deficits) to date; the amount of advances received; and the amount of retentions. The contracts signed by the main contractor, consultancies and the sub-contractor provided for retention monies and advance payments to various contractors. It was however noted that the Fund did not report retention of Kshs.170,222,858 and advance payment not yet recovered of Kshs.242,524,026 in the financial statements.

Consequently, the propriety of the project expenditure could not be ascertained.

3. Uncertified Works

As previously reported, office partitioning works at Central Kenya regional office was awarded to M/s Plenser Limited at a cost of Kshs.4,958,766 according to quotation number 0837 dated 24 October 2011. The work involved partitioning of the new office space and the existing (old) office space at the cost of Kshs.3,560,953 and Kshs.713,845 before VAT respectively. Although inspection and acceptance certificate No.296 indicate that partitioning works in respect of the new office space were well done, the committee did not give any comments on the certificate relating to works on existing (old) office space. As a result, the Fund may have paid Kshs.713,845 for works not done.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Tourism Fund in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgement, were of most significance in the audit of the financial statements. Except for the matters described in the Basis for Qualified Opinion section of my report, there were no other Key Audit Matters to report in the year under review.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis)] and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Fund's ability to continue sustaining services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless the management intends to have the Fund cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

Those charged with governance are responsible for overseeing the Fund's financial reporting process.

Auditor-General's Responsibilities for the Audit of the Financial Statements

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution of Kenya. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances and for the purpose of giving an assurance on the effectiveness of the Fund's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the management.
- Conclude on the appropriateness of the management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Fund to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Institute to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.

A handwritten signature in black ink, appearing to read 'E. O. Ouko', with three dots below the signature.

FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

26 July 2018