

REPUBLIC OF KENYA



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OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability

REPORT

OF

THE AUDITOR-GENERAL

ON

PRIVATIZATION COMMISSION

FOR THE YEAR ENDED

30 JUNE, 2025

REPUBLIC OF KENYA

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REPORT OF THE AUDITOR-GENERAL ON PRIVATIZATION COMMISSION FOR THE YEAR ENDED 30 JUNE, 2025

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements;
- B. Report on Lawfulness and Effectiveness in the Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure the Government achieves value for money and that such funds are applied for the intended purpose; and,
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, risk management environment and internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

A Qualified Opinion is issued when the Auditor-General concludes that, except for material misstatements noted, the financial statements are fairly presented in accordance with the applicable financial reporting framework. The Report on Financial Statements should be read together with the Report on Lawfulness and Effectiveness in the Use of Public Resources, and the Report on Effectiveness of Internal Controls, Risk Management and Governance.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012, and the Public Audit Act, 2015. The three parts of the report when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Privatization Commission set out on pages 1 to 41, which comprise of the statement of financial position as at 30 June, 2025, 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 effects of the matter described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Privatization Commission as at 30 June, 2025 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 Privatization Act, 2023 and the Public Finance Management Act, 2012.

Basis for Qualified Opinion

Irregular Payment of Retainer Fees

The statement of financial performance reflects board expenses of Kshs.14,221,882 as disclosed in Note 10 to the financial statements. The expenditure includes directors' emoluments amounting to Kshs.8,350,000 made up of sitting allowance of Kshs.5,000,000 and retainer fees of Kshs.3,350,000 paid to board members on top of sitting allowance. However, although Management explained that the National Treasury had approved payment of the retainer fees in 2014, approval from the Salaries and Remuneration Commission was not provided contrary to the provisions of Article 230(4)(a) of the Constitution which requires the Commission to set and regularly review the remuneration and benefits of all state officers.

In the circumstances, the validity of retainer fees of Kshs.3,350,000 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Privatization Commission Management in accordance with ISSAI 130 on the 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.

Emphasis of Matter

1. Slow Implementation of the Authority's Core Mandate

As previously reported, the Commission commenced its operations in 2008. Since then, it has successfully completed the privatization of only one (1) public enterprise. In 2022/2023, seven (7) privatization proposals were submitted to The National Treasury for approval, out of which, six (6) were approved. However, none of the six has been privatized. In 2024/2025, and as indicated in the report of the Executive Director/Chief Executive Officer, the Commission made two (2) more privatization proposals to The National Treasury for approval. However, approval for the two has also not been granted.

The Authority has, therefore, not effectively achieved its core mandate on privatization of public enterprises. This is despite the Commission continued spending on operations including Kshs.157,046,588 on employee costs as disclosed in Note 8 to the financial statements and a further Kshs.37,527,624 on transaction advisory services as disclosed in Note 11 to the financial statements.

It is, therefore, not clear whether value for money was realized from the expenditure of Kshs.194,574,212 spent on employee costs and transaction advisory services during the year.

2. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects receipts budget of Kshs.512,364,756 against actual receipts of Kshs.536,697,825 resulting in excess receipts of Kshs.24,333,069 or 5% of the budget. Similarly, the statement reflects actual expenditure of Kshs.295,024,885 against approved budget of Kshs.512,364,756 resulting in under-performance of Kshs.217,339,871 or 42% of the budget.

The under-performance affected implementation of planned activities and may have impacted negatively on service delivery to the public.

My opinion is not modified in respect of these matters.

Key Audit Matters

Key audit matters are those matters that, in my professional judgement, are of most significance in the audit of the financial statements. Except for the effects of the matter described in the Basis for Qualified Opinion section, I have determined that there are no other key audit matters to communicate in my report.

Other Information

The Directors are responsible for the Other Information set out on page iii to lxi which comprise of Key Entity Information and Management, Board of Directors, Key Management Team, Chairman's Statement, Report of the Executive Director/CEO, Statement of Performance against Predetermined Objectives, Corporate Governance Statement, Management Discussion and Analysis, Environmental and Sustainability Reporting, Report of the Directors and Statement of Directors' Responsibilities. The Other Information does not include the financial statements and my audit report thereon.

In connection with my audit on the Commission's financial statements, my responsibility is to read the Other Information and, in doing so, consider whether the Other Information is materially inconsistent with the financial statements or my knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this Other Information, I am required to report that fact. I have nothing to report in this regard.

My opinion on the financial statements does not cover the Other Information and accordingly, I do not express an audit opinion or any form of assurance thereon.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the effects of the matter described in the Basis for Conclusion

on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

Non-Compliance with the Privatization Commission Act, 2023

Section 5(1) of the Privatization Act, 2005 (revised 2023) indicates that the Commission shall comprise of the Chairman, Attorney General, Principal Secretary – the National Treasury and seven members not being public officers appointed by the Minister. However, during the year under review, the Commission comprised of the Chairman, Attorney General, Principal Secretary – The National Treasury and five members not being public officers. The Commission was therefore not fully constituted as two members had not been appointed.

In the circumstances, the appointing authority was in breach of the law.

The audit was conducted in accordance with ISSAI 3000 and ISSAI 4000. The standards require that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements comply in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the effects of the matter described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing else has come to my attention to cause me to believe that internal controls, risk management and governance were not effective.

Basis for Conclusion

Under-establishment of Staff in Key Departments

Review of the Commission's Human Resource records revealed that the Commission had an approved optimum staffing of 63 staff. However, during the year, a total of 30 employees were in-post translating to a shortfall of 33 staff or 63% of the required number.

In the circumstances, the under-establishment could adversely affect the attainment of the Commission's mandate.

The audit was conducted in accordance with the ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal controls, risk management and overall governance were operating effectively, in all material respects. I believe that the audit

evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and the Board of Directors

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 maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Commission's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless Management is aware of the intention to terminate the Commission or to 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.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the authorities which govern them and that public resources are applied in an effective way.

The Board of Directors is responsible for overseeing the Commission's financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

My responsibility is to conduct an audit of the financial statements in accordance with Article 229(4) of the Constitution, Section 35 of the Public Audit Act, 2015 and International Standards of Supreme Audit Institutions (ISSAIs). The standards require that, in conducting the audit, I obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error and to issue an auditor's report that includes my opinion in accordance with Section 48 of the Public Audit Act, 2015. 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.

In conducting the audit, Article 229(6) of the Constitution also requires that I express a conclusion on whether or not in all material respects, the activities, financial

transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way. In addition, I consider the entity's control environment in order to give an assurance on the effectiveness of internal controls, risk management and governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015.

Further, I am required to submit the audit report in accordance with Article 229(7) of the Constitution.

Detailed description of my responsibilities for the audit is located at the Office of the Auditor-General's website at: <https://www.oagkenya.go.ke/auditor-generals-responsibilities-for-audit/>. This description forms part of my auditor's report.


FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

21 November, 2025