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**BARINGO COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

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**THE BARINGO COUNTY INVESTMENT AND ECONOMIC
DEVELOPMENT CORPORATION BILL, 2016**

A BILL for

AN ACT of the County Assembly of Baringo for the establishment of a legal and institutional framework for promotion, co-ordination and management of investment and development and for connected purposes.

ENACTED by the County Assembly of Baringo as follows —

PART I — PRELIMINARY

Short Title.

1. This Act may be cited as the **Baringo County Investment and Economic Development Corporation Act, 2015** and shall come into force upon publication in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires —

“Person” means a natural or legal person;

“Executive Committee Member” means the County Executive Committee Member in charge of Industry, Trade and Investment or the equivalent;

“Board” means the Board of the Corporation;

“Corporation” means the Baringo Economic Development Corporation;

“County” means the Baringo County as established under the Constitution;

“County Executive Committee” means the County Executive Committee as constituted under the Article 179 of the Constitution of Kenya 2010 and the County Government Act;

“County Government” means the County Government of Baringo;

“Constitution” means the Constitution of Kenya, 2010;

“Executive Investment Committee” means a Committee comprising of the County Executive Committee Members responsible for Industry, Trade and Investment; Tourism and ICT; Lands, Mining and Natural Resources; Finance and Economic Planning and Community Development, Women Empowerment, Youth and Social Services or their equivalent; and

“Governor” means the Governor of the Baringo County.

Purpose of the Act.

3. The purpose of this Act is to provide for the establishment of a legal and Institutional framework for County Investment and Economic Development in order to —

- (a) Enhance financial and economic prudence in the County Government Investments;
- (b) Enable the county government to undertake public private partnerships and joint ventures in areas that are beneficial to the county;
- (c) Establish an efficient and effective instrument for managing county government investments;
- (d) Enhance competitiveness of county government investments;
- (e) Promote local investment and economic development;
- (f) Enhance county revenue base;
- (g) Co-ordinate and facilitate investments in the county;
- (h) Provide for mobilisation of finances for investments;
- (i) Provide for investment in socially beneficial projects;
- (j) Facilitate investments in the county.

PART II — ESTABLISHMENT OF INVESTMENT AND ECONOMIC DEVELOPMENT CORPORATION

Establishment of the Corporation.

4. (1) There is established a corporation to be known as Baringo Investment and Economic Development Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) receiving, borrowing, lending money making investments;
- (d) entering into contracts; and
- (e) doing or performing any act which may lawfully be done or performed by a body corporate for the proper performance of its functions under this Act.

Objects of the Corporation.

5. The objects and purposes of the Corporation are to —

- (a) promote the investment and economic development in the County;
- (b) improve the economic well-being of the people in the County; and
- (c) raise revenue on behalf of the County Government.

Functions of the Corporation.

6. The functions of the Corporation shall be to —

- (a) Hold property and assets on behalf of the County Government for the purposes of investment and development;
- (b) Promote and carry on projects that have the potential of turning the County's rich economic potential into wealth to improve the economic well-being of the people in the County;
- (c) Promote sectors that have the potential of wealth creation in order to strengthen the competitiveness of the County and well-being of the people;
- (d) Engaging in industrial and commercial initiatives and transactions on behalf of the County Government for the benefit of the citizens of County;
- (e) Promote entrepreneurship amongst the residents of the County and nurture and expand emerging and new businesses through partnerships and other support;
- (f) Mobilise domestic and external resources for investment;
- (g) Undertake business ventures solely or in partnership with other entities or persons on behalf of the County Government whilst safeguarding the interests of the people of the County;
- (h) Identifying strategic investment opportunities for the benefit of the County;
- (i) Promoting local economic growth and job creation;

- (j) Advising and facilitating the County Government and County residents on investment opportunities within and outside the County;
- (k) Assisting and facilitating investors from within or outside the County to establish investments in the County;
- (l) Acting as the focal agency for investment promotion and facilitation in the County;
- (m) Advising Executive Member and the County Executive Committee on necessary policies, programs and plans to be adopted in order to attract investments in the County;
- (n) Carrying out such other roles necessary for the implementation of the objects and purposes of this Act and perform such other functions as may, from time to time, be assigned by the County Executive Committee.

Seal of the Corporation.

7. (1) The application of the Seal of the Corporation shall be authenticated by the signatures of the Chairperson of the Corporation or some other director authorised by the Corporation to authenticate the application of the seal thereof and of the Chief Executive Officer.

(2) Every document purporting to be an instrument issued by the Corporation and sealed as provided under subsection (1) shall be deemed to be such an instrument without further proof unless the contrary is shown.

Powers of the Corporation on areas of strategic interest.

8. The Corporation may on its own or through joint ventures, subcontracting or other modes of business relationships, undertake commercial activities in areas of strategic interest to the County including, amongst others, engaging in —

- (a) tourism including owning and managing county hotels;
- (b) agro-processing including food processing, fruit processing and processing all types of nuts;

- (c) quarrying activities including the production of silica sand, building sand, coral stones and other products;
- (d) mining including base minerals, lime, quarry and cement;
- (e) housing including residential housing units, office blocks, gated communities and holiday homes;
- (f) land holding, buying of land from private owners and entering into joint ventures with private land owners and other public entities;
- (g) breeding of animals, fattening and marketing the same;
- (h) development of industrial parks;
- (i) entertainment industry;
- (j) water and sewerage services;
- (k) acquisition of existing viable enterprises either privately-owned or public;
- (l) generating energy and power to serve the County and beyond; and
- (m) any other commercial activity as may be decided by the Board.

Board of Corporation.

9. (1) The management of the Corporation shall vest in the Board of Corporation consisting of —

- (a) A non-executive chairperson appointed by the Governor and approved by the County Assembly;
- (b) Chief Officer for the time being responsible for trade and investments;
- (c) Chief Officer for the time being responsible for finance;
- (d) Two professionals appointed by the executive member responsible for trade through a competitive process in consultation with the Governor and approved by the County Assembly;
- (e) The Chief Executive Officer who shall be an *ex-officio* member and secretary to the Board.

(2) The Chairperson and other members of the Board shall hold office for a period of three years and shall be eligible for re-appointment for one more term.

(3) A person shall be qualified for appointment as Chairperson or a member of the Board if the person—

- (a) holds a degree from a recognised university in finance management, economics, law, accounting, business or any other related field;
- (b) has experience and distinguished career of at least ten years in senior level management in public or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution; and

(4) Notwithstanding subsection (3) the members of the Board shall retire on rotation, in a manner that will ensure that not more than two thirds of the members retire at the same time.

(5) Not more than two thirds of the members of the Board under (1) shall be of the same gender.

Proceedings of the Board.

10. (1) The quorum necessary for the transaction of business of the Board of Corporation shall be four members, except where regulations made under this Act otherwise provide.

(2) The Chairman of a meeting shall in the case of equality of votes have a second casting vote.

(3) The proceedings of the Board of Corporation shall not be affected by any vacancy amongst the members of the Board or by any defect in the appointment of a Director.

(4) Subject to the provisions of this Act and of any regulations made under this Act, the Board shall regulate its own procedure.

Recording of Minutes.

11. The Chief Executive Officer shall cause minutes of all proceedings of the Board to be recorded and entered in books kept for that purpose.

Minutes Book.

12. The books containing the minutes of the proceedings of the Board shall remain the property of the Corporation and shall be kept in the custody of the Chief Executive Officer.

Remuneration of the Corporation.

13. The Chairperson and other Corporation staff shall receive such remuneration and allowances as may, from time to time, be determined by the County Executive Member in charge of trade and investments after consultation with the County Executive Member responsible for finance.

Officers and Employees of the Corporation.

14. (1) The Corporation may hire such officers and employees as may be necessary for the effective discharge of the functions of the Corporation on such terms and conditions as the Board may determine.

(2) The Corporation shall —

- (a) recruit staff through a competitive process;
- (b) ensure optimal number of staff, qualified in disciplines such as finance, business, investment, economics, projects management and related fields.

General powers of the Corporation.

15. The Corporation shall have power to —

- (a) provide credit and finance by means of loans or the subscription of loan or share capital or otherwise for industrial and commercial enterprises or other undertakings in the County;
- (b) subscribe for, conditionally or unconditionally underwrite, issue on commission or otherwise, take, hold, deal in and convert shares, stocks, obligations and securities of all kinds;
- (c) enter into partnership, or into any arrangement, except mergers, for participating in undertakings, sharing profits, union of interest, reciprocal concession or co-operation with any person, partnership or company;
- (d) advance, deposit or lend money, securities and property to or with such persons, partnerships or companies and on such terms as may seem expedient; to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrants, coupons, debentures and other negotiable or transferable instruments;

- (e) guarantee or become liable by way of surety or indemnity for the payment of money, or for the performance of any contracts or obligations, and generally to transact all kinds of guarantee, trust or agency business;
- (f) purchase, take on lease, hire or otherwise acquire, and to sell, exchange, surrender, lease, mortgage, charge, convert, turn to account, dispose of and deal with, any movable or immovable property and rights of all kinds;
- (g) sell, exchange, mortgage (with or without power of sale), assign, lease, sublet, improve, manage, develop, dispose of, turn to account, grant rights and privileges in respect of and generally otherwise deal with the whole or any part of the business, estates, property, rights or undertakings of the Corporation, upon any terms, either together or in portions, and as a going concern or otherwise, for such consideration, whether of cash, shares, stocks, obligations or securities, as the Corporation may think fit; and
- (h) invest and deal with money upon such securities and in such manner as may from time to time be determined, and to place money on deposit or current account with any bank or building society.

Protection from personal liability.

16. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expense incurred by any person in any pursuit or prosecution brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that act was done *bona fide* be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages.

17. The provisions of section 13 shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Corporate Governance.

18. The Corporation shall establish and implement corporate governance principles and practices applicable to similar entities.

PART III — FINANCIAL MANAGEMENT

Capitalisation of the Corporation.

19. (1) The Corporation shall consist of —
- (a) moneys allocated and appropriated to the Corporation from the County Revenue Account, from time to time, by the County Assembly;
 - (b) any grants, gifts, donations, loans or other endowments given to the Corporation;
 - (c) revenues realised from investments undertaken by the Corporation;
 - (d) moneys that may accrue to the Corporation in the course of the performance of its functions under this Act; and
 - (e) monies from any other lawful source accruing to the Corporation.

(2) There shall be paid from the Corporation operational and business expenses incurred in the administration and operations of the Corporation.

Bank accounts.

20. (1) The Board shall open a bank account of the Corporation and such other accounts as it may deem necessary in commercial banks decided by the Board with the approval of the Executive Committee Member.

(2) The signatories to the bank accounts operated under subsection (1) shall be the Chairperson, Secretary to the Board and two other persons appointed by the Board with the approval of the Executive Committee Member.

(3) The signing instructions shall be such that the signature of the Secretary to the Board shall be mandatory on all payment cheques or other instrument intended for actual release of money from the Corporation, in addition any two of the other three signatories.

Estimates of income and expenditure.

21. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the income and expenditure of the Corporation for that year.

(2) The annual estimates shall make provisions for all the estimates of expenditure of the Corporation for the relevant financial year and shall provide for —

- (a) The cost of the administration and operations of the Board, including payment of salaries, allowances, pensions, gratuities and other charges payable to the staff and members of the Board; and
 - (b) Allocation for investments and other payments and charges of the Corporation;
 - (c) Debt repayment schedule;
 - (d) Proper maintenance of buildings and grounds of the Corporation;
 - (e) Maintenance, repairs and replacement of the equipment and other property of the Corporation; and
 - (f) Creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.
- (3) The financial estimates referred to under subsections (1) and (2) shall —
- (a) differentiate between recurrent and disbursement and business expenditure; and

(b) itemize every activity that the Board intends to undertake in respect of the Corporation in the coming financial year under a separate vote head.

(4) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Executive Committee Member for tabling in the County Executive Committee and the County Assembly for its approval.

(5) No expenditure shall be incurred by the Corporation except in accordance with the annual estimates approved under subsection (4).

(6) Upon the approval of the estimates by the County Assembly, all monies appropriated for purposes of the Corporation shall be paid into the relevant accounts operated under section 20.

Annual Report and Publication.

22. (1) The Board shall, within a period of three months after the end of each financial year or within such longer period as the Executive Committee Member may approve in writing, submit to the Executive Committee Member a report of the operations of the Corporation during that year.

(2) The Board shall, after submission of the report to the Executive Committee Member, publish the report, in the County Gazette and in at least one newspaper of wide circulation in the County.

(3) The Executive Committee Member shall lay the reports before the County Assembly, including the balance sheet and the statements of accounts, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

Accounts and audit.

23. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Corporation.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts prepared under subsection (1) in respect of that year together with a statement of —

- (a) the income and expenditure of the Corporation during that year;
- (b) the income and expenditure of the Corporation; and
- (c) the assets and liabilities of the Corporation on the last day of that financial year.

(3) The annual accounts referred to under this section shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 299 of the Constitution and the Public Audit Act.

Financial year.

24. The financial year of the Corporation shall be the period of twelve months beginning on the first day of July and ending on the thirtieth day of June in the following year.

Powers of guarantee.

25. The power of the Corporation to guarantee, or become liable by way of surety or indemnity for, the payment of money, or the performance of any contracts or obligations, shall be limited to the extent that the aggregate amount remaining undischarged under all liabilities by way of guarantee, surety or indemnity assumed by the Corporation shall not at any time exceed the value, as determined by the Corporation from time to time, of the assets of the Corporation available for meeting that aggregate amount.

Surplus funds.

26. The Corporation may, after consultation with the County Executive Member and with the approval of the County Executive Member responsible for finance, pay into the County Revenue Fund Account any declared dividends principal and interest on borrowing from the County Government.

PART IV — INVESTMENT MANAGEMENT

Investment principles.

27. The Corporation shall be guided by the following principles while undertaking any investment—

- (a) Value for money;
- (b) Prudence in financial and investment management;
- (c) Efficiency;
- (d) Economy;
- (e) Competitiveness in approach to business;
- (f) Financial sustainability.

Investment powers.

28. Subject to any written law on governance of public investments, the Corporation shall have powers to —

- (a) Establish subsidiaries, holding entities or joint ventures for undertaking any business venture for the purposes of realising its objectives;
- (b) Invest in property or real assets, bonds, securities, bank deposits, trust funds, treasury bills or any investment venture approved by the County Treasury.

Capitalisation.

29. (1) Subject to the approval of the County Executive Committee and where applicable the County Assembly, the Corporation may raise capital by way of —

- (a) Loans;
- (b) Floating bonds;
- (c) Shares;
- (d) Receiving;
- (e) Sale of assets or property;
- (f) Re-investment of surplus;
- (g) Appropriations from the County Assembly;
- (h) Any other way as may from time to time be approved by County Treasury.

(2) The Corporation shall not borrow money by way of loans or float any bonds or shares unless such borrowing is related to capital investments.

(3) Notwithstanding subsection (2), the Corporation may borrow short-term loans for the purposes of maintaining sufficient cash flows in accordance with Public Financial Management Act, 2012.

Investment strategy and plan.

30. (1) The Corporation shall prepare a five-year corporate investment strategy and plan within four months after the Board is constituted which shall be forwarded to the County Executive Committee for approval.

(2) The Executive Member shall, within fourteen days of the approval of the corporate strategy and plan by the Executive Committee, transit it to the clerk of the County Assembly for tabling before the County Assembly for consideration and approval.

(3) The investment strategy and plan shall provide among others for —

- (a) Source of investment capital;

- (b) Targeted investment opportunities;
- (c) Investment portfolio;
- (d) Expected return on capital or investment;
- (e) Specific investment projects and their respective projects appraisals including rate of return on investment or capital employed;
- (f) Estimated cost of the investments;
- (g) Any other matter as the Executive Member may prescribe.

(4) The Corporation shall not undertake any investment unless it is in accordance with the investment strategy and plan.

(5) The Corporation shall prepare annual plans for implementing the investment plan and strategy which shall be forwarded to the executive member for onward transmission to the County Assembly for approval by December each year.

Investment or project appraisal.

31. (1) The Corporation shall not undertake any investment or project unless it has undertaken an investment or project appraisal and financial analysis in accordance with the prescribed guidelines.

Financial soundness.

32. The Corporation shall maintain the prescribed—

- (a) Asset base to enable it realize its objectives;
- (b) Liquidity ratios;
- (c) Debt service plan;
- (d) Any other information that the executive member may from time to time prescribe.

Partnership.

33. The Corporation may enter into partnership or collaboration with any entity for the purposes of carrying out the objectives of this Act.

Dividend policy.

34. (1) The dividend policy shall stipulate among others for —

- (a) The prevailing business conditions under which dividend may be paid out;
- (b) Minimum percentage of annual dividend payout to the County Government;
- (c) Any other matter as the executive member prescribes.

Winding up.

35. The Corporation shall not be wound up except by or under the Authority of an Act of the County Assembly of Baringo.

PART V — MISCELLANEOUS

Personally liable.

36. No director or officer of the Corporation shall be personally liable for any act or thing done or omitted to be done in good faith and without negligence in the course of the operations of the Corporation.

Regulations.

37. The County Executive Member may make regulations that are necessary or desirable for the proper conduct of the business of the Corporation and without prejudice to the generality of the foregoing, make regulations regarding the following —

- (a) the convening of the meetings of the Board of Corporation and its committees and the procedure to be followed thereat;
- (b) the appointment or establishment of committees of the Board of Corporation, and the co-opting of persons to such committees; and the brand and type of a common seal and the custody and use thereof.

(1) The executive member may, on recommendation of the Board make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may —

- (a) Prescribe for the guidelines for undertaking investment or project appraisal;
- (b) Prescribe the matters related to investment plan and strategy.

GEOFFREY CHELAL

Chairperson, Tourism, Industrialisation, Trade and Enterprise Development