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No 4 of 2018

Date of Assent 24th December, 2018

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Embu County Investment and Development Corporation



THE EMBU COUNTY INVESTMENT AND DEVELOPMENT CORPORATION ACT, 2018

AN ACT of the County Assembly of Embu to provide for the establishment of legal institutional framework for promotion and co-ordination of investment and development and for connected purposes

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

1 This Act may be cited as the Embu County Investment and Development Corporation Act, 2018 and shall come into force upon publication in the *Gazette*

Short title

2 In this Act, unless the context otherwise requires—

Interpretation

“Corporation” means the Investment and Development Corporation established under section 4,

“County Executive Committee” means Embu County Executive Committee established in accordance with Article 176 of the Constitution,

“Board” means the Board of the Corporation established under section 6,

“Executive Member” means the County Executive Committee Member for the time being responsible for investment,

3 The purpose of this Act is to provide for the establishment of legal and institutional framework for county investment and development in order to—

Purpose of the Act

- (a) enhance financial and economic prudence in county government investments,
- (b) establish an efficient and effective instrument for managing county government investments,
- (c) enhance competitiveness of county government investments,
- (d) promote local investment and economic development,
- (e) assist in enhancing the county revenue base,
- (f) provide for mobilization of finances for

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investments,

- (g) provide for investment in socially beneficial projects,
- (h) facilitate and encourage investments by county residents,
- (i) co-ordinate and facilitate investments in the county,
- (j) enable the county government to undertake public private partnerships and joint ventures in areas that are beneficial to the county

PART II—THE INVESTMENT AND DEVELOPMENT CORPORATION

4 (1) There is established a Corporation to be known as the Embu County Investment and Development Corporation

Establishment of a 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) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property,
- (c) borrowing money or making investments,
- (d) entering into contracts, and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate

(3) The Corporation shall be fully owned by the County Government

5 The Corporation shall be responsible for—

Functions of the Corporation

- (a) holding property and assets on behalf of the county government for the purposes of investment and development,
- (b) undertaking investments on behalf of the county government for the purposes of generating revenue,

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- (c) undertaking any development initiative for the county with a business or social purpose,
- (d) identifying strategic investment opportunities for the benefit of the county,
- (e) undertaking business ventures solely or in partnership with other entities or persons for the benefit of the county,
- (f) promoting local economic growth and job creation,
- (g) advising and facilitating the county government and county residents on investment opportunities within and outside the county,
- (h) assisting and facilitating investors from within or outside the county to establish investments in the county,
- (i) promoting and facilitating investment in the county,
- (j) acting as the focal agency for investment promotion and facilitation in the county,
- (k) resources mobilization for investments and development
- (l) 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,
- (m) carrying out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the County Executive Committee

6 (1) The management of the Corporation shall vest in the Board of Directors which shall consist of—

Board of the
Corporation

- (a) a non-executive chairperson who shall be appointed by the Governor with the approval of the County Assembly,
- (b) chief officer for the time being responsible for investment,
- (c) chief Officer for the time being responsible for

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finance,

- (d) one professional from each sub-county appointed by the Executive Member through competitive process with the approval of the County Assembly
- (e) the Managing Director appointed in accordance with section 11 with the Approval of the County Assembly who shall be an *ex officio* member and secretary to the Board

(2) The appointments under this section shall reflect the diversity of the residents in the County, Gender, Youth, persons with disability and regional balance

(3) The Corporation established under section 4, shall for purposes of section 5 of the Public Finance Management Act, 2012 be a County government entity

(4) A person shall be qualified for appointment as a chairperson or member of the Board if that person—

- (a) is a citizen of Kenya,
- (b) holds a degree from a university recognized in Kenya,
- (c) has knowledge and experience either in the public or private sector of at least ten years, in case of the Chairperson or five years in the case of a member, in matters relating to the field of Economics, Law, Finance, Accounting, Business studies, Tourism, Public administration or any other relevant field,
- (d) meets the requirements of chapter six of the Constitution, and
- (e) has had a distinguished career in their respective fields

(5) The term of office for the chairperson or a member appointed under sub section (1) (d) shall be three years, which may be renewed for one further term, after which the person shall retire from the Board

(6) Notwithstanding subsection (5), 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

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same time

(7) The Chairperson and members of the Board shall serve on the Board on a part-time basis

(8) Not more than two thirds of the members of the Board under sub-section (1) shall be of the same gender

(9) The office of the Chairperson or a member of the Board shall become vacant at the expiry of the term of contract or if the holder—

- (a) dies,
- (b) by notice in writing addressed to the executive member resigns from office,
- (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months, or
- (d) is removed from office in accordance with sub-Section 6

(10) The Chairperson or member of the Board may be removed from office on any of the following grounds—

- (a) violation of the Constitution or any other written law,
- (b) gross misconduct,
- (c) physical or mental incapacity that leads to inability to perform the functions of office,
- (d) incompetence,
- (e) bankruptcy,
- (f) absence from three consecutive meetings of the Board without justifiable cause,
- (g) if the Chairperson or a member becomes a director of any other corporation or holds shares or has any other interest in a corporation, partnership or other body, directly or through another person, if the holding of those shares or having that interest would result in a conflict of interest with that member's official duty and does not declare the interest,
- (h) if the Chairperson or member is convicted of a criminal offence and sentenced to imprisonment

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for a period of more than six months

(11) Where there is an allegation on any of the grounds listed in subsection (1) the Executive Member shall appoint a committee of not more than five Heads of County Departments to investigate and recommend to the appointing authority and the County Assembly of the possible measure to be taken

7 Where a vacancy occurs in the membership of the Board under Section 6, the appointment procedure provided for under this Act shall apply

Filling of vacancy

8 The functions of the Board shall be to—

Functions of the Board

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation,
- (b) advise the management of the Corporation generally on the exercise of the powers and the functions of the Corporation,
- (c) approve the estimates of revenue and expenditure of the Corporation, and
- (d) perform such other functions as are provided for under this Act or any other written law

9 (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule

Conduct of business

(2) Except as provided in the Schedule, the Board may regulate its own procedure

10 The remuneration of the members of the Board shall be determined by the County Executive Committee upon the advice of Salaries and Remuneration Commission

Allowances of the members of the Board

11 (1) There shall be a Managing Director of the Corporation who shall be the accounting officer and the Chief Executive Officer of the Corporation

Appointment of the Managing Director

(2) The Managing Director shall be appointed recruited through a competitive process by the executive member in consultation with the Board and with the Approval of the County Assembly

(3) To qualify for appointment as a Managing Director, a person must—

- (a) be a citizen of Kenya,

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- (b) possess a master's degree in business, accounting, finance or any other related field from a recognized university,
- (c) have had experience in senior management level for a period of not less than five years
- (4) The Managing Director shall hold office for a term of four years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of four years
- (5) The Managing Director shall—
 - (a) in consultation with the Board, be responsible for the day to day management and direction of the affairs and transactions of the Corporation, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Corporation,
 - (b) carry out any other function as may from time to time be assigned by the Board
- (6) The Managing Director may—
 - (a) at any time resign from office by issuing notice in writing to the chairperson of the Board,
 - (b) be removed from office by the executive member on recommendation of the Board, for—
 - (i) serious violation of the Constitution or any other written law,
 - (ii) gross misconduct,
 - (iii) physical or mental incapacity to perform the functions of office,
 - (iv) incompetence, or
 - (v) bankruptcy

12 (1) The Corporation may appoint such staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine

Staff of the
Corporation

(2) The staff in subsection (1) shall be recruited through a competitive process,

(3) The Corporation shall ensure that there are sufficient number of staff qualified in matters related to

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finance, investment analysis and management and project management

(4) The Corporation may request for deployment of staff from the Embu County Public Service Board

13 (1) The common seal of the Corporation shall be kept in the custody of the Managing Director and shall not be used except upon the authority of the Board

The Corporation seal

(2) The common seal of the Corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given

(3) The common seal of the Corporation shall be authenticated by the signature of the Managing Director

14 (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 in good faith 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

Protection from liability

(2) Any expenses incurred by any person in any suit 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 such act was done in good faith be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution

15 The provisions of section 14 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

Liability for damages

16 The Corporation shall establish and implement corporate governance principles and practices applicable to county corporations and county government entities, which shall guide its operations

Corporate governance

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17 (1) The Corporation shall prepare a report for each quarter of the financial year in respect of the Corporation in accordance with the provisions of Public Finance Management Act, 2012

(2) In preparing a quarterly report for the Corporation, the Managing Director shall ensure that the report—

- (a) contains information on the financial and non-financial performance of the entity,
- (b) has been approved by the Board, and
- (c) is in a form determined by the Accounting Standards Board

(3) the managing Director shall submit a copy of the quarterly report to the County Executive Committee member responsible for the Corporation, who, upon approving it, shall not later than fifteen days after the end of each quarter, submit a copy to the County Treasury

(4) Not later than one month after the end of each quarter, the County Treasury shall—

- (a) consolidate the quarterly reports and submit them to the county assembly,
- (b) deliver copies to the Controller of Budget, National Treasury and the Commission on Revenue Allocation, and
- (c) publish and publicize them

18 (1) The Corporation shall, within three months after the end of each financial year, prepare and submit to the executive member a report of the operations of the Corporation for the immediate preceding year

Annual report

(2) The annual report shall provide information regarding the activities and plans of the Corporation during the year to which it relates, sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include—

- (a) details of the performance of the Corporation against its key performance indicators,
- (b) report on the overall status of the investment

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portfolio and profitability of each investment venture including the Corporation's projections for the following year,

- (c) such information and other material as the Corporation may be required by this Act or regulations made thereunder to include in the annual report,
- (d) measures taken to implement corporate governance principles and practices,
- (e) the financial statements prepared under section 24,
- (f) report of the Auditor-General prepared under section 24,
- (g) such additional information or other material as the Executive Member may request in writing,
- (h) the Executive Member shall, within fourteen days of receiving the annual report submit it to the county executive committee for consideration and approval,
- (i) the County Executive Committee may after considering the report, make recommendations on appropriate ways of effectively implementing the report and shall thereafter submit the report to the County assembly

19 The Corporation may be dissolved only with the prior approval of the County Executive Committee and in accordance with provisions of Public Finance Management Act, 2012 and Regulations made thereunder

Dissolution of the Corporation

PART III—FINANCIAL PROVISIONS

20 (1) The funds and assets of the Corporation shall consist of—

Funds of the Corporation

- (a) such moneys as may be appropriated by county assembly for the purposes of the Corporation,
- (b) revenues realized from investments undertaken by the Corporation,
- (c) such gifts, grants or monies received from any lawful source, and
- (d) all monies borrowed from securities market or

received as loans to the Corporation

(2) The Corporation shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the Corporation and as prescribed under this Act

21 The financial year of the Corporation shall be the period of twelve months ending on the thirtieth June in each year

Financial year

22 (1) At least three months before the commencement of each financial year, the Corporation shall cause to be prepared annual estimates of the Corporation for that year

Annual estimates

(2) The annual budget shall make provision for all estimated expenditure of the Corporation for the financial year and in particular, the estimates shall provide for the—

- (a) allocations for investments related to each business venture,
- (b) debt repayment schedule,
- (c) payment of the salaries, allowances and other charges in respect of the staff of the Corporation, payment of allowances and other charges in respect of members of the Board,
- (d) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Corporation,
- (e) proper maintenance of the buildings and grounds of the Corporation,
- (f) maintenance, repair and replacement of the equipment and other property of the Corporation, and
- (g) 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 annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in

the estimates shall be submitted to the County Executive Committee for onward transmission to the County Assembly for final approval

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the executive member

23 The Board shall cause to be kept proper books and records of accounts and assets of the Corporation

Accounts

24 (1) Within a period of three months after each financial year, the Board shall submit to the Auditor-General and the County Assembly, the accounts of the Corporation together with—

Financial reports and audit

- (a) a statement of financial position as at the thirtieth day of June,
- (b) a statement of comprehensive income,
- (c) a statement of cash flow for the year ended,
- (d) a summary of significant accounting policies and other explanatory information,
- (e) other financial statements applicable to similar institutions

(2) The accounts of the Corporation shall be audited and reported upon in accordance with the provisions of the Public Audit Act

PART IV—INVESTMENT MANAGEMENT

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

Investment principles

- (a) value for money,
- (b) prudence in financial and investment management,
- (c) efficiency,
- (d) economy,
- (e) competitiveness in approach to business,
- (f) financial sustainability,

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- (g) social good, and
- (h) environmentally sustainable

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

- (a) establish subsidiaries, holding entities or joint ventures for undertaking any business venture for the purposes of realizing 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

27 (1) Subject to the approval of the county executive committee and the county assembly, the Corporation may raise capital by way of— Capitalization

- (a) loans,
- (b) floating bonds,
- (c) shares,
- (d) receiving grants,
- (e) sale of assets or property,
- (f) reinvestment of surplus,
- (g) appropriations from the county assembly,
- (h) any other way as may from time to time be approved by County executive

(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 flow in accordance with the Public Finance Management Act, 2012

(4) The means of raising of capital provided for in sub-clauses (1) shall be done in accordance with the provisions of the Public Finance Management Act, 2012, the Public Procurement and Asset Disposal Act, 2015 and any other Embu county and national legislations

28 (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 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

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

(4) The Corporation may review the investment plan or strategy after each year in order to align it with prevailing market and investment trends

(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 executive for approval by December each year

29 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

Investment or project
appraisal and
financial analysis

30 (1) The Corporation shall institute measures to ensure that—

Sustainability
profitability and
competitiveness

- (a) its operations and investments are sustainable and profitable, and
- (b) it is competitive in all its investment ventures

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(2) The Corporation shall undertake an assessment after every two years to measure the sustainability, profitability and competitiveness of each investment venture

(3) Notwithstanding subsection (2), the executive member may require at any time the Corporation to undertake the assessment stipulated under subsection (2) in relation to any investment venture where the executive member is of the opinion that the venture does not meet the required threshold for sustainability, profitability and competitiveness

(4) The executive member may in consultation with the Board require the assessment under subsection (3) to be undertaken by an independent person or entity

(5) Where an investment venture ceases to be sustainable, profitable or competitive, the Corporation may—

- (a) restructure the investment,
- (b) merge the investment with other investments, or
- (c) terminate the investment by way of sale, disposal, transfer or liquidation where the investment was carried out by a subsidiary as the sole business

31 The Corporation shall maintain the prescribed—

Financial
sustainability

- (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

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

Partnership

33 (1) The Corporation shall, in consultation with the County Executive Committee establish a returns on investment policy, which shall be reviewed annually

Returns on
investment policy

(2) The returns on investment policy shall stipulate among others for—

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- (a) the prevailing business conditions under which returns on investment may be paid out,
- (b) minimum percentage of annual returns on investment pay-out to the county government,
- (c) any other matter as the executive member prescribe

PART V—GENERAL PROVISIONS

34 The county executive committee shall identify property or assets owned by the county government that shall be transferred to the Corporation for the purposes of implementing this Act

Transfer of assets

(2) The property and assets transferred under this section shall be registered under the name of the Corporation

35 The executive member may, in consultation with the Board make Regulations generally for the better carrying out of the objects of this Act

Regulations

(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 returns on investment policy,
- (c) prescribe matters related to investment plan and strategy,
- (d) prescribe the code of conduct for members and staff of the Board,
- (e) prescribe the code of governance for the Corporation in accordance with this Act and any other relevant Embu County or national legislation, and
- (f) prescribe anything required by this Act to be prescribed

PART VI—TRANSITIONAL PROVISIONS

36 Until the appointment of the Managing Director under section 11(2), the Executive Member shall in

Transitional provisions

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consultation with the County Public Service Board appoint an officer from the county public service to act as the Managing Director and Secretary of the Board

Provided that the officer so appointed shall possess the qualification of the Managing Director provided for in this Act and the substantive managing director shall be appointed within six months after appointment of the Chairperson

SCHEDULE (Sec 9(1))**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

(1) The Board shall meet not more than six times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting

(2) Meetings of the Board shall be convened by the Chairperson

(3) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least three members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board and such special meeting shall be held not later than twenty-one days from the date of the receipt of the requisition

(4) Unless three members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board

(5) The quorum for the conduct of the business of the Board shall be four members including the chairperson or the person presiding

(6) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote

(8) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof

(9) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question