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HOMA BAY COUNTY BILLS, 2018

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**THE HOMA BAY COUNTY INVESTMENT AND
DEVELOPMENT CORPORATION BILL, 2018**

A Bill for

AN ACT of the Homa Bay County to provide for the establishment of the Homa Bay County Investment and Development Corporation, to make provision for the respective roles of the corporation and its directorates, to improve the coordination of all investment promotion, enterprise development and protection, and to provide appropriate incentives for attraction and retention of investors and for related purposes in the county

ENACTED by the County Assembly of Homa Bay as follows—

PART I — PRELIMINARY PROVISIONS

1. This Act may be cited as the Homa Bay County Investment and Development Corporation Act, 2018 and shall come into force on the fourteenth day after its publication in the Kenya Gazette and County Gazette.

Short title and
commencement.

2. In this Act unless the context otherwise requires—

Interpretation.

“Corporation” means the Homa Bay County Investment and Development Corporation;

“County” means the Homa Bay County;

“County Assembly” means the County Assembly of Homa Bay

“Board Meeting” means a full board meeting

“County Executive Committee Member” means County Executive Committee Member responsible for Trade, Industrialization, Cooperatives and Enterprise Development.

“Foreign investor” means—

- (a) a natural person who is not a citizen of Kenya;
- (b) a partnership in which the controlling interest is owned by a person or persons who are not citizens of Kenya; or
- (c) a company or other body corporate incorporated

under the laws of a country other than Kenya;

“Investment” means the contribution of local or foreign capital by an investor, including the creation or acquisition of business assets by or for a business enterprise and includes the expansion, restructuring, improvement or rehabilitation of a business enterprise;

“Investment certificate” means an investment certificate issued under the Investment Promotion Act;

“Issuing Authority” means a legal body mandated to issue licenses and includes but not limited to KenInvest, under Investment Promotion Act;

“License” includes a registration, permit, approval or authorization required by law regardless of how it is described; “Local investor” means—

- (a) a natural person who is a citizen of Kenya;
- (b) a partnership in which the partnership controlling interest is owned by a person who is a citizen of Kenya;
- (c) a company incorporated under the laws of Kenya, in which the majority of shares are held by a person who is a citizen of Kenya; or
- (d) a trust or trust corporation established under the laws of Kenya, in which the majority of trustees and beneficiaries are citizens of Kenya;
- (e) Cooperative society established under the laws of Kenya, in which the majority members are citizens of Kenya

PART II—ESTABLISHMENT OF THE CORPORATION, ITS POWERS FUNCTIONS, AND MANAGEMENT

3. (1) There is established a Corporation to be known as the Homa Bay County Investment and Development Corporation.

Establishment of the
corporation

(2) The Corporation is 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) borrowing money;
- (d) entering into contracts; and
- (e) 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

4. (1) The corporation shall have the powers to—

Powers of the Corporation

- (a) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the Corporation is established;
- (b) determine the provisions to be made for its capital and recurrent expenditure and for the reserves of the Corporation;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established;
- (e) open such bank accounts for its funds as may be necessary;
- (f) invest any funds of the Corporation not immediately required for its purposes; and
- (g) undertake any activity necessary for the fulfillment of any of its functions.

5. The Corporation shall—

Functions of the Corporation

- (a) approve and provide credit and finance by means of loans or other subscription of loan or share capital or otherwise for industrial, commercial or other undertakings or enterprise in Homa Bay County or elsewhere;
- (b) enter into partnership, or into any arrangement

for participating in undertakings, sharing profits, union of interest;

- (c) guarantee or become liable by way of surety or indemnity for the payment of money, or for the performance of any contracts, lease, mortgage, charge, convert, turn to account, dispose of and deal with, any movable or immovable property and rights of all kinds;
- (d) purchase or otherwise acquire and carry on the whole or part of the business, property, goodwill and assets of any person, partnership or company carrying on, or proposing to carry on, any business which the Corporation is authorized to carry;
- (e) sell, exchange, mortgage, 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, estate, property, right, or undertakings of the Corporation;
- (f) 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.
- (g) raise or borrow money, with or without security.
- (h) act as the manager, agent or secretary of any undertaking and to nominate or appoint any person to act as director of, or in any other capacity in relation to any undertaking, and to act as the agent or representative of any undertaking, whether carrying on business in Kenya or elsewhere;
- (i) undertake investment promotion activities locally and internationally;
- (j) offer pre and post-investment facilitation services to both local and foreign investors;
- (k) carry out feasibility studies and generate sector as well as investment project profiles for promotion

to prospective investors; and

- (l) perform 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

6. (1) There shall be a Board of the Corporation which shall consist of—

Board of the Corporation.

- (a) Chairperson appointed by the Governor;
- (b) Chief Officer responsible for Trade, Industrialization and Investment or their designated representative(s);
- (c) Chief officer responsible for Finance and Economic Planning or their designated representative(s);
- (d) Four persons all of whom shall be appointed by the County Executive Committee Member from among persons appearing to the County Executive Committee Member to have experience and shown capacity in, industry, trade or administration;
- (e) Chief Executive Officer of the Corporation appointed under section 11, who shall be the Secretary of the Board and an ex-officio member;

(2) A person shall be qualified for appointment as a member of the Board subsection if that person holds at least degree from a recognized university in Kenya in the field of business administration or financial management and has at least ten years' experience in the relevant field at a senior management level

(3) The Board shall ensure the proper and effective performance of the functions of the Corporation.

(4) The members of the Board shall be paid allowances determined by the County Executive Committee Member, in consultation with the Salaries and Remuneration Commission.

(5) The members of the Board shall sign a performance contract with the County Executive Committee Member for the effective supervision of the Corporation.

7.(1) A member of the Board of the Corporation, other than an *ex officio* member, shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

Tenure and vacation
of office

(2) A member of the Board may —

- (a) at any time resign from office by notice in writing to the County Executive Committee Member;
- (b) be removed from office if the member —
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) otherwise fails to comply with the requirements of Chapter Six of the Constitution of Kenya;
 - (v) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shilling;
 - (vi) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board

8.(1) The conduct and regulation of the business and affairs of the Corporation shall be as provided in the first schedule.

Conduct of the
meetings of the
Board.

(2) Except as provided in the first schedule, the Corporation may regulate its own procedure.

9.(1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board relating to that matter.

Disclosure of interest

(2) A member of the Board who fails to disclose interest in accordance with subsection (1) shall cease to be a member of the Board.

10. Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Corporation, the exercise of any of the powers or, the performance of any of the functions or duties of the Board under this Act.

Delegation of functions.

11. (1) The Board shall, in consultation with The County Executive Committee Member and subject to subsection (2), appoint a Chief Executive Officer through a competitive process.

Chief Executive Officer and other staff

(2) A person shall be qualified for appointment as the Chief Executive Officer under subsection (1) if that person holds an advanced degree from a recognized university in Kenya in the field of business administration or financial management and has at least ten years' experience in the relevant field at a senior management level.

(3) A person appointed to be the Chief Executive Officer under subsection (1) shall hold the office for a term of four years but shall be eligible for re-appointment for one further term of four years.

(4) The Board may appoint such officers and other staff of the Corporation that are necessary for the proper and effective performance of the functions of the Corporation.

12. (1) The Chief Executive Officer shall—

Functions of the Chief Executive Officer

- (a) be responsible for the day to day administration of the affairs of the Corporation and shall be answerable to the Board.
- (b) Be the accounting officer.
- (c) Coin the strategic direction in liaison with the Board.
- (d) in consultation with the Board, be responsible for the 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;

- (e) be the secretary of the Board; and
- (f) perform any other functions determined by the Board

13. (1) The Corporation shall establish directorates including—

Directorates of the Corporation

- (a) Directorate of enterprise development; and
- (b) Directorate of investment promotion and facilitation;

(2) The directorates shall be headed by a director competitively recruited by the Board of Directors

(3) Without prejudice to the general power of the Corporation to establish directorates as contemplated under subsection (1), the Corporation may establish directorates for any aspect of investment promotion and enterprise development as may be necessary to enable the carrying out of any specialized activities with respect to the promotion or management of that Investment and/ or enterprise.

14. (1) The Directorate of Enterprise Development, shall—

Role of the Directorate of Enterprise Development

- (a) avail to the Corporation and County Government ways and means of providing credit and finance by means of loans or other subscriptions of loan or share capital or otherwise for industrial, commercial or other undertakings or enterprise in the County or elsewhere;
- (b) advance, deposit or lend money, securities to or with such persons, partnerships or companies and on such terms as may be seen expedient; to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrant, coupons, debentures and other negotiable or transferable instruments;
- (c) 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; and

- (d) do all such other things whether of an industrial, commercial or other nature as may be deemed to be incidental or conducive to the attainment of the above object or any of them and to the exercise of the rights, powers and authorities given by the Acts

15. (1) The Directorate of Investment promotion and facilitation shall—

Role of the
Directorate of
Investment
Promotion

- (a) Promote and facilitate investment in the County;
- (b) Facilitate issuance of investment certificates from issuing authority for eligible investors;
- (c) Facilitate issuance of any necessary licenses and permits;
- (d) provide information, including information on investment opportunities or sources of capital
- (e) promote, both locally and internationally, the opportunities for investment in the County.
- (f) review the investment environment and make recommendations to the county government and others with respect to changes that would promote and facilitate investment, including changes to licensing requirements.
- (g) facilitate and manage investment sites, estates or land together with associated facilities on the sites, estates and lands;
- (h) appoint agents within the county and in any other country to carry out certain functions on its behalf, as it may consider necessary.
- (i) Carry out such other activities as, in the Corporation's opinion, will promote and facilitate investment

PART III—INVESTMENT CERTIFICATES

16. (1) An investor may apply to the issuing authority through the Directorate of Investment Promotion for an

Application for
Investment
certificates

investment certificate.

(2) An application or an investment certificate shall be in the prescribed form of the issuing authority.

17. (1) An applicant shall be entitled within the County to an investment certificate if—

Entitlement to
Certificate

- (a) the application is complete and satisfies the applicable requirements of the issuing authority;
- (b) the amount to be invested by a foreign investor is at least one hundred thousand United States Dollars (\$100,000) or the equivalent in another currency;
- (c) the amount to be invested by a local investor is at least Four million Kenya shillings or the equivalent in another currency and;
- (d) the investment and the activity related to the investment are lawful and beneficial to Homa Bay County

(2) In determining whether an investment and the activity related to the investment is beneficial to the County for the purpose of sub-section (1), the Corporation shall consider the following parameters;

- (a) Creation of employment;
- (b) Acquisition of new skills or technology;
- (c) Contribution to tax revenues or other county income streams;
- (d) utilization of domestic raw materials, supplies and services;
- (e) adoption of value addition in the processing of local, natural and agricultural resources;
- (f) utilization, promotion, development and implementation of information and communication technology; or
- (g) any other factors that the Corporation, through its Directorate of Investment Promotion, considers beneficial to the county

18. (1) The Directorate of Investment promotion shall ensure expeditious issuance of certificate of investment to the applicants by the issuing authority and

Issuance of
Certificate

release the same as soon as it is received from such issuing authority.

(2) The Directorate Of Investment Promotion shall liaise with the issuing authority to procure an investment certificate in the name of a company established by the applicant for the purposes of the investment or in the name of any other business organization to be used for the purposes of the investment.

(3) A local investor who does not hold an investment certificate shall register the investment with the Corporation through its directorate of investment promotion for purposes of formal licensing by the issuing authority

19. An investment certificate shall be subject to—

Conditions of
Certificate

- (a) such conditions as prescribed in the regulations of the issuing authority; and
- (b) such conditions as the director may specify at the time the certificate is applied.

20. (1) An investment certificate shall set out the benefits to which the holder of the investment certificate is entitled to upon issuance.

Benefits of
Investment
Certificate

(2) The Directorate of Investment promotion shall facilitate, through the relevant issuing authority, the issuance of permits and passes that the holder of the investment certificate is entitled to have under the relevant law.

21. (1) An investment certificate may be transferred only with the written notification to the directorate and with the approval of the issuing authority.

Transfer of
Certificate

(2) The transfer of an investment certificate is subject to any restrictions prescribed in the regulations of the issuing authority

22. At the request of the holder of the certificate, the Directorate may facilitate the amendment process of an investment certificate subject to any restrictions prescribed in the regulations of the issuing authority.

Amendment of
certificate

23. (1) The Directorate may initiate the process of revocation of an investment certificate with the issuing

Revocation of
certificate

authority on the following grounds—

- (a) the certificate was issued on the basis of incorrect information given by the applicant for the certificate;
- (b) the investment certificate was obtained by fraud; or
- (c) a condition of the investment certificate was breached.

(2) If the Directorate proposes to revoke an investment certificate, the Corporation shall give the holder of the investment certificate at least thirty (30) days written notice of the grounds for the proposed revocation and shall give the holder an opportunity to make representations as to why the investment certificate should not be revoked.

24. A person who has applied to the issuing authority through the directorate for an investment certificate or a person who is or was a holder of an investment certificate may request the issuing authority to appoint a panel to review a decision of the Directorate relating to the application or operation of the certificate.

Review of
Decision made by
the issuing authority

PART IV—FINANCIAL PROVISIONS

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

Funds of
Corporation

- (a) such moneys as may be appropriated by the County Assembly for the purposes of the Corporation;
- (b) such gifts as may be given to the Corporation; and
- (c) all moneys from any other lawful source provided, donated or lent to the Corporation.

(2) The Board shall present to the County Executive Committee Member a report at least quarterly on new or emerging lawful sources of income.

(3) All moneys received in respect of the levy shall be paid to the Corporation and if not paid on or before the date prescribed by the order, the amount due shall be a civil debt recoverable summarily by the Corporation.

(4) The Corporation shall apply the money received under this section for the furtherance of the objects and performance of the functions of the Corporation.

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

Annual estimates

(2) The Chief Executive Officer shall forward the budget estimates to the County Executive Committee Member for approval.

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

- (a) payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (b) payment of allowances and other charges in respect of members of the Board;
- (c) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Corporation;
- (d) proper maintenance of the buildings and grounds of the Corporation;
- (e) maintenance, repair 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.

27. (1) The Board shall—

Accounts and Audits

- (a) cause to be kept books of accounts and other books and records in relation to the fund and for all loans financed from the fund;
- (b) ensure that the accounts for the fund and annual financial statements relating to the accounts comply with the accounting standards prescribed and published by the Accounting Standards

Board from time to time;

- (c) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end of the financial year, a statement of accounts relating to the fund, prepared and signed and sealed by the board specifying the income of the fund, in such details as the Board may as from time to time direct in accordance with the Public Finance Management Act, 2012;
- (d) present the financial statements to the County Assembly and the County Executive Committee Member;
- (e) furnish such additional information as it may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General;
- (f) cause to be published all financial statements and the audited reports in the Kenya and County Gazette, in at least one newspapers of national circulation the corporation website and any other platform the Board may deem fit

PART V—MISCELLANEOUS PROVISIONS

28. (1) The common seal of the Corporation shall be kept in the custody of the Chief Executive Officer and shall not be used except upon the order of the Board.

The Common Seal
of the Corporation

(1) 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.

(2) The common seal of the Corporation shall be authenticated by the signature of the chairperson of the Board and the Chief Executive Officer.

(3) The Board shall, in the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Corporation on behalf of either

the Chairperson or the Chief Executive Officer

29. (1) No commission or omission by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the commission or omission is *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.

Protection from
personal 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 *bona fide*, be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit.

30. The provisions of section 29 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

31. (1) A person who knowingly submits false or misleading information to the Corporation for the purposes of obtaining an investment certificate or obtaining any assistance on enterprise development from the Corporation commits an offence.

Misleading the
Corporation

(2) A person found guilty of an offence under subsection 1 is liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or both

32. (1) A person who, without lawful excuse divulges information acquired in the course of acting under this Act commits an offence.

Improperly
divulging
information.

(2) A person found guilty of an offence under subsection 1 is liable to a fine of not less than five million shillings or to imprisonment for a term not less than three years or both

33. The County Executive Committee Member may make regulations, with the approval of the County Assembly, generally for the better carrying out of the provisions of this Act

FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OF THE CORPORATION

(1) The Board shall meet not more than four 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) 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.

(3) Unless three of the total 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.

(4) The quorum for the conduct of the business of the Board shall be one half of all the members.

(5) 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.

(6) 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.

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

(8) 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.

(10) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(11) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

(12) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

(13) The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The Homa Bay County Investment and Development Corporation Bill is a Bill for an Act of the Homa Bay County to provide for the establishment of the Homa Bay County Investment and Development Corporation, to make provision for the respective roles of the corporation and its directorates, to improve the coordination of all investment promotion, enterprise development and protection, and to provide appropriate incentives for attraction and retention of investors and for related purposes in the county.

Statement of the delegation of legislative powers and the limitations of fundamental rights and freedoms

The Bill delegates legislative powers to the County Executive Committee Member to make regulations with regards to matters concerning the Bill, with the approval of the County Assembly, for the better implementation of the Act pursuant to Article 183(1)(a) of the Constitution Kenya 2010.

The Bill does not limit any fundamental right and freedoms.

Statement of how the Bill concerns county government.

The Bill concerns the county government of Homa Bay in line with the provisions of Article 186(1) and the Fourth Schedule Part 2 of the Constitution of Kenya 2010 in terms of setting out the revenue raising measures for the county government of Homa Bay. The activities shall be in line with the exclusive functions of the County

Statement as to whether the Bill is within the meaning of Article 114 of the constitution.

The Bill is not a money Bill within the meaning of Article 114 of the Constitution Kenya 2010.

Statement of financial implication

The activities of the Corporation will be funded by the county government through funds allocated to it by the County Assembly. The corporation will take over investment related activities currently being undertaken by the department of trade, industrialization and investment as well as those undertaken by the office of the economic adviser. Once the corporation is established, it will take over some of these activities as well as the resources allocated. The funds of the corporation shall be managed by the Board of Directors as provided for by the Bill.

Dated the 6th March, 2018

MICHAEL ONYANGO ODIRA,
*Chairperson, Committee on Trade, Industrialization Cooperative and
Enterprise Development.*

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