

SPECIAL ISSUE

Kenya Gazette Supplement No. 14 (Mombasa County Acts No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MOMBASA COUNTY ACTS, 2019

NAIROBI, 31st December, 2019

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2019

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2019 *Mombasa County Investment Corporation*

No. 7

**THE MOMBASA COUNTY INVESTMENT CORPORATION ACT,
2019**

**AN ACT of the County Assembly of Mombasa to provide for the
establishment of a Corporation for promotion and coordination
of investment and for connected purposes**

ENACTED by the County Assembly of Mombasa, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Mombasa County Investment Corporation Act, 2019 and shall come into force upon publication in the Gazette.

Interpretation

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

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

“Chief Officer” means a Chief Officer of County Government of Mombasa;

“Corporation” means the Mombasa County Investment Corporation established under section 4;

“County Executive Committee” means the County Executive Committee of County Government of Mombasa;

“County” means Mombasa County;

“County Government” means the Government of Mombasa County;

“County Public Service Board” means the Mombasa County Public Service Board;

“Executive Committee Member” means the Executive Committee Member for the time being responsible for matters relating to Investment;

“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.

“Governor” means Governor of Mombasa County;

“Investment” means the contribution of local or foreign capital by an investor, for the purposes of acquisition, expansion, restructuring, improvement or rehabilitation of business enterprise;

“investment certificate” means an investment certificate issued under this 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 the 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 trustees and beneficiaries are citizens of Kenya.

Purpose of the Act

3. The purpose of this Act is to provide for a legal and institutional framework for county investment in order to—

- (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) enhance county revenue base;
- (f) provide for mobilization of finances for investments;
- (g) provide for investment in socially beneficial projects;
- (h) facilitate 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;
- (k) facilitate the industrial and commercial development of the County; and
- (l) enhance the expansion of industrial, commercial and other undertakings in the County.

PART II—THE MOMBASA COUNTY INVESTMENT CORPORATION

Establishment of the Corporation

4. (1) There is established a Corporation to be known as the Mombasa County Investment Corporation.

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

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of property;
- (b) borrowing money;
- (c) 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 entire shareholding of the Corporation shall be owned by the County Government.

(4) In the exercise of its functions under this Act, the Corporation shall operate within the following principles—

- (a) it shall act as an auxiliary finance organization and not as the primary source of finance for any undertaking or enterprise;
- (b) in the exercise of its powers of providing capital, whether movable or immovable, so far as possible, to third parties, it shall do so by way of guarantee, loan or investment and not by way of grant or subsidy;
- (c) requiring early liquidation or repayment of any guarantee, loan or investment made by the corporation, in order to ensure that the liquid capital of the corporation be available for other purposes within the scope of the powers of the Corporation listed under section 5 and, in particular, to the desirability of ensuring that any

such undertaking or enterprise will be of long-term value in relation to the development of County, whether or not it is likely to prove self-supporting or to furnish direct profits either immediately or in the future.

Powers of the Corporation

5. (1) The Corporation shall, subject to the approval, generally or specially, of the Executive Committee Member, and subject to such terms and conditions she may impose in giving such approval, have the powers to—

- (a) provide credit, finance, capital by means other subscription of loans or share capital or otherwise for industrial, commercial or other undertakings in Mombasa County;
- (b) undertake any investment for the purpose of generating revenue by entering into partnership, joint venture or any other arrangement for participating in undertakings, enterprises, sharing profits, reciprocal concession or co-operation with any person, partnership or company, and to take or otherwise acquire and hold shares or stocks in or obligations or securities of and to subsidize any partnership or company, and to sell, hold, reissue, with or without guarantee, (excluding trading in shares and stocks), any such shares, stocks, obligations or securities, and to promote and aid in promoting, constitute, form or organize companies, syndicates, or partnerships of all kinds and to exercise and enforce all rights and powers conferred by or incident to its ownership of any shares, stocks, obligations or securities for the time being held or owned by the Corporation;
- (c) act as a think tank in highlighting policy issues, and concurrently with that, in ensuring a feedback loop of business information, to act as the manager, agent or secretary of any undertaking and/or enterprise 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;
- (d) be the focal point for all investment-related activities in the County and consider and register investment proposals from investors and provide necessary assistance for implementation of projects including the provision of support services to investors including assistance to procure authorizations, permits and licenses required for establishment and operation of

activities promoted by the Corporation with additional powers to act as the single interface with all the investors and liaise with relevant authorities in the National Government for the granting of occupation permits, residence permits and other relevant permits required by an investor to operate in the County;

- (e) to 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;
- (f) to purchase or otherwise acquire and carry on the whole or any 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 on, or which can be conveniently carried on in connection with that business or may seem calculated, directly or indirectly, to benefit the Corporation, or possessed of property suitable for the purposes of the Corporation, and, as part of the consideration for any of those acts or things or property acquired, to undertake all or any of the liabilities of that person, partnership or company, or to acquire an interest in, amalgamate with or enter into any arrangement for sharing profits or for co-operation or for limiting competition or for mutual assistance with any such person, partnership or company, and to give, issue or accept cash or any shares, stocks, obligations or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, stocks, obligations or securities so received;
- (g) to 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, immovable and movable 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.
- (h) subject to the provisions of section 32(2), to raise or borrow money, with or without security, and also to secure the payment of money by the issue of or upon debentures or debenture stock, perpetual, terminable or otherwise, or bonds, or other obligations charged or not charged upon, or by mortgage, charge, hypothecation, lien or pledge of the whole or any part of the undertaking, property, assets and rights of the Corporation,

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both present and future, and generally in such other manner and on such terms as may seem expedient, and to issue any of the Corporation's obligations or securities for such consideration and on such terms as may be thought fit; and also, by a similar mortgage, charge, hypothecation, lien or ledge, to secure and guarantee the performance by the Corporation of any obligation or liability it may undertake, and to redeem or pay off any such securities;

- (i) initiate, organize and participate in all activities such as exhibitions, conferences and seminars for stimulation of investments;
- (j) provide and disseminate up-to-date information on incentives available to investors;
- (k) advise the Executive Committee Member and the County Executive Committee on necessary policies, programs and plans to be adopted in order to attract investments in the County; and
- (l) facilitate the County Government of Mombasa on investment in strategic areas.

(2) Any exercise by the Corporation of its powers of investment described in section 5(1) are not to be termed as "disposals" or "procurements" within the meaning and tenure of these two terms as defined and applied within the provisions of the Public Procurement and Asset Disposal Act, No. 33 of 2015.

Board of the Corporation

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

- (a) non-executive chairperson who shall be appointed by the Governor;
- (b) Chief Officer for the time being responsible for Finance;
- (c) the Chief Officer for the time being responsible for Investment;
- (d) five professionals appointed by the Executive Committee Member in consultation with the Governor;
- (e) the Managing Director who shall be an *ex-officio* member. The Board shall appoint the Managing Director; and (f) the County Attorney.

(2) For a person to be qualified for appointment as a chairperson or a member appointed under subsection (1) (d), the person shall possess the following minimum qualifications—

- (a) holds a bachelors degree;
- (b) has knowledge and experience of not less than five years in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The term of office for the chairperson or a member appointed under section (6) (1) (d) shall be three years, which may be renewed for one further term.

(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 and not more than one fifth of the members of the Board shall be of the same ethnicity.

Functions of the Board

7. The functions of the Board shall be to—

- (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 performance of the functions of the Corporation;
- (c) approve the estimates of the revenue and expenditure of the Corporation for transmission for approval by the County Treasury and County Assembly as guided under the existing laws; and
- (d) perform such other functions as are provided for under this Act or any other written law.

Conduct of business

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

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

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Remuneration of the Board

9. The Corporation shall pay members of the Board such allowances and expenses as determined by the Salaries and Remuneration Commission.

Managing Director

10. (1) There shall be a Managing Director of the Corporation who shall be the Chief Executive Officer of the Corporation.

(2) The Managing Director for subsequent years after the formative two years shall be appointed by the Board.

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

- (a) posses a degree in economics, logistics, accounting, finance or any other related field from a recognized university; and
- (b) have had experience in senior management for a period of not less than seven years.

Tenure of Office

11. The Managing Director shall hold office for a period of three 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 three years.

Functions of Office

12. The Managing Director shall in consultation with the Board —

- (a) be responsible for the day to day management and direction of the affairs and transactions of the Corporation,
- (b) the exercise, discharge and performance of its objectives, functions and duties;
- (c) the general administration of the Corporation; and
- (d) carry out any other function as may from time to time be assigned by the Board.

Vacation of Office

13. Any Board Member 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 Committee 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;
 - (v) bankruptcy.

Staff of the Corporation

14. (1) Board of the Corporation shall appoint such staff as are necessary for proper discharge of the functions of the Corporation under this Act, upon such terms and conditions of service as it may determine in consultation with the Corporation.

- (2) The Corporation shall—
- (a) recruit staff through a competitive process;
 - (b) ensure that there are sufficient number of staff qualified in matters related to finance, investment analysis, commercial management, logistics and large scale project management; and
 - (c) ensure that not more than one fifth of the staff of the Corporation are of the same ethnicity.

The common seal of the Corporation

15. (1) The common seal of the Corporation shall be kept in the custody of the Managing Director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(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 two directors nominated by the Board.

Protection from personal liability

16. (1) Any act or omission by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the act or omission is done in good faith for executing the functions, powers or duties of the Corporation under this Act, render the member, officer,

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employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever, is nor liable for such acts or omissions.

(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.

Liability from Damages

17. The provisions of section 16 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.

Annual Report

19. (1) The Corporation shall, within three months after the end of each financial year, prepare and submit to the Executive Committee Member a report of the operations of the Corporation for the immediate preceding year.

(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 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 rules 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 21;
- (f) report of the Auditor-General prepared under section 21; and
- (g) such additional information or other material as the Executive Committee Member may request in writing.

PART III—FINANCES OF THE CORPORATION

Funds of the Corporation

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

- (a) such moneys as may be appropriated by the County Assembly for the purposes of the Corporation;
- (b) revenues realized from investments undertaken by the Corporation;
- (c) such gifts, grants or moneys received from any lawful source; and
- (d) all moneys 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.

(3) All levies as may legally be levied with Corporation of the County treasury.

Financial Year

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

Annual Estimates

22. (1) In the first financial year, and thereafter, 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. These shall be for purposes of audit of the Corporation as an entity and for transmission of budget estimates through the County Treasury to the Assembly in accordance with the Public Finance Management Act.

(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—

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- (a) allocations for investment capital 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;
- (d) payment of allowances and other charges in respect of members of the Board which must be in strict compliance to the guidelines issued by the Salaries and Remuneration Commission from time to time.;
- (e) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Corporation;
- (f) proper maintenance of the buildings and grounds of the Corporation;
- (g) maintenance, repair and replacement of the equipment and other property of the Corporation; and
- (h) 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 final approval through the County Assembly as stipulated in section 8 of the County Governments Act.

(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 authorization of the Board given with prior written approval of the Executive Committee Member.

Accounts

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

Financial reports and audit

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

- (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; and
- (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 PROMOTION, INCENTIVES, LICENSES, CERTIFICATES AND PERMITS

Investment promotion strategy

25. (1) The Corporation shall prepare at least a ten-year investment promotion strategy subject to the approval of the County Executive Committee.

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

- (a) targeted sources of investment capital;
- (b) targeted investment opportunities;
- (c) specific investment projects and their respective projects appraisals that should be undertaken by the County Government in order to promote investment in the County;
- (d) estimated cost of the investments; and
- (e) any other matter as the Executive Committee Member may prescribe.

(3) The Corporation shall not undertake any investment promotion activity unless it is stipulated under the plan.

(4) The Corporation may review the investment promotion strategy after each year in order to align it with the prevailing investment environment and trends.

(5) The Corporation shall prepare annual plans for implementing the investment promotion strategy.

Partnership

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

Entitlement to certain licenses

27. (1) An investment certificate shall be in the form set out in the rules and regulations made by the Executive Committee Member under this Act and approved by the County Assembly.

(2) Upon the issue of an investment certificate, the following apply with respect to each license set out in the certificate under sub clause (1)—

- (a) the holder of the investment certificate is entitled to have the license issued, subject to any conditions that may be contained in the rules and regulations made by the Executive Committee Member or contained in the investment certificate, upon application made within twelve months after the investment certificate is issued and upon payment of the applicable fee, if any; and
- (b) until the license is issued or twelve months elapse after the investment certificate is issued, whichever occurs first, the license shall be deemed to have been issued subject to the requirement to pay fees under sub clause (3).

(3) The holder of an investment certificate shall pay any fees that would be payable under the relevant legislation for the licenses set out in the investment certificate in respect of the time period commencing on the day the investment certificate is issued and such fees shall be paid within six months after the date of issue of the investment certificate.

(4) The entitlement to licenses under sub clause (2) (a) is for the initial issue of such license only and following that initial issue the laws under which the licenses are issued apply in the same way as they apply to all licenses, including, for greater certainty, with respect to the revocation or renewal of the licenses.

(5) The Board shall facilitate the issue of licenses to which the holder of an investment certificate is entitled under this clause.

Access to land for investment

28. (1) The County in collaboration with the National Land Commission and upon execution of a lease agreement with an investor shall provide land for investment. (2) The allocation of land shall be subject to payment of appropriate land rents and rates by the investor.

Prohibition against discrimination

29. (1) No official, agency, law or other legal Corporation shall discriminate against investors from a particular country or give special

treatment to prospective foreign investors based upon their country of origin or nationality.

(2) Foreign investors shall be subject to the same laws that apply to domestic business organizations.

PART V—INVESTMENT MANAGEMENT

Investment Principles

30. 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 and
- (f) financial sustainability.

Investment powers

31. 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 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.

Capitalization

32. (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 grants;
- (e) sale of assets or property;
- (f) reinvestment of surplus;

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- (g) appropriations from the County Assembly; and
- (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 flow in accordance with the Public Financial Management Act, 2012.

Investment strategy and plan

33. (1) The Corporation shall prepare a ten-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 Committee Member shall, within fourteen days of the approval of the corporate strategy and plan by the County Executive Committee, transmit 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; and
- (g) any other matter as the Executive Committee 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 may review the investment plan or strategy after each year in order to align it with prevailing market and investment trends.

(6) The Corporation shall prepare long term development plan in line with the County Integrated Development Plan.

Investment or project appraisal and financial analysis

34. 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 rules and regulations as guided by a prudent investment analyses.

Sustainability, profitability and competitiveness

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

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

(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 Committee 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 Committee Member is of the opinion that the venture does not meet the required threshold for sustainability, profitability and competitiveness.

(4) The Executive Committee 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 board with approval of the executive 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.

Financial sustainability

36. The Corporation shall maintain the prescribed—

- (a) asset base to enable it realize its objectives;
- (b) liquidity ratios;
- (c) debt service plan; and
- (d) any other information that the Executive Committee Member may from time to time prescribe.

Dividend policy

37. (1) The Corporation shall establish a dividend policy, which shall be reviewed annually.

(2) 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; and
- (c) any other matter as the Executive Committee Member prescribe.

PART VI—PENALTIES AND OFFENCES

Penalties

38. Any amount that is due and payable to the Corporation will attract such penalties as prescribed in the rules and regulations.

Offence of misleading the Corporation

39. A person who submits false or misleading information to the Board for the purposes of obtaining an investment certificate or obtaining any assistance from the Board is guilty of an offence, and upon conviction is liable, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or both.

Improperly divulging information

40. A person who, without lawful excuse divulges detrimental information acquired in the course of acting under this Act is guilty of an offence and is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or both.

PART VII—GENERAL PROVISIONS

Regulations

41. (1) The Executive Committee Member may make such rules and regulations with regard to the better carrying out of the objects, purposes and functions of this Act including specific investment sectors or particular investments, the procedures for the issue of licenses, certificates and permits to investors, penalties and any other matters required to be carried out under this Act.

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

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

Transfer of assets

42. (1) 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 subject to approval by the County Assembly.

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

Dispute resolution

43. (1) In the event of any disagreement regarding any matter on investments in the County, all efforts shall be made through mutual discussion to reach an amicable solution.

(2) Any dispute between an investor and the County in respect to which this Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration under the provisions of the Arbitration Act.

FIRST SCHEDULE

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

Vacation of office

1. A member of the Board other than the County Government officers may—

- (a) at any time resign from office by notice in writing to the Executive Committee Member;
- (b) be removed from office by the Executive Committee Member or the Governor in the case of the chairperson, if the person —
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (vi) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Corporation;
 - (vii) fails to comply with the provisions of this Act relating to disclosure;
 - (viii) Commits acts of Gross misconduct; or
 - (ix) is in serious violation of the Constitution or any other written law.

Meetings

2. (1) The Board shall meet not less 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, 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 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 four members including the chairperson or the person presiding.

(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 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.

Conflict of interest

3. (1) 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, 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.

(2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.

(3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

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(4) If the chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Committee Member in writing.

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

(7) The Board shall report to the Executive Committee Member any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

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

(10) 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.

Code of conduct

4. (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and staff of the Board in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comments.

(3) The Board shall include in its annual report a report on compliance with the code during the period covered by the annual report.

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.

Execution of Interest

5. Any contract or instrument which, if entered into or executed will be construed to have been executed by the Corporation as a body corporate Must be under seal and shall be entered into or executed on behalf of the Board only by a person authorized by this Act to be custodian of the seal or with a written delegated Corporation to do so.

Minutes

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

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