

THE KILIFI COUNTY INVESTMENT AND DEVELOPMENT CORPORATION BILL, 2019

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THE KILIFI COUNTY INVESTMENT AND DEVELOPMENT CORPORATION ACT, 2019

A Bill for

AN ACT of County Assembly of Kilifi to Provide for the legal and institutional framework for investment and related matters by the Kilifi County Government and for connected purposes

ENACTED by the County Assembly of Kilifi, as follows-

PART I-PRELIMINARY

Citation and Commencement

1. This act may be cited as the Kilifi County Investment and Development Corporation Act, 2018 and shall come into force on the fourteenth day after its 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;

“Corporation” means the Kilifi County Investment and Development Corporation established under section 4;

“Executive Committee Member” means the County Executive Committee member responsible for Finance and Economic Planning.

Objects and Purposes of this Act

3. The object and purpose of this Act is to provide a legal and institutional framework for investment and related matters by the County Government 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) support programs aimed at economic and social development of the County;
- (e) support the promotion of investment and private sector development in the County;
- (f) promote local economic development; and
- (g) enhance county revenue base.

PART II-THE COUNTY INVESTMENT AND DEVELOPMENT CORPORATION

Establishment of the corporation

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

(2) The corporation is a body corporate with perpetual succession and a common seal and must, in its corporate name, be capable of-

- (a) taking, purchasing, or otherwise acquiring, holding, charging, or disposing of movable and immovable property;
- (b) borrowing money and making investments;
- (c) entering into contracts; and
- (d) 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 is wholly owned by the County Government.

Functions of the Corporation.

5. The functions of the corporation are to-
- (a) Hold properties and assets on behalf of the County for the purposes of investment;
 - (b) Undertake any investment on behalf of the County for the purposes of generating revenue for the County Government;
 - (c) Undertake business ventures for the benefit of the county;
 - (d) Promote local economic development and job creation; and
 - (e) Carry out such other roles necessary for the for the implementation of the objects and purpose of this Act.

Board of Directors of the Corporation

6. (1) There shall be a Board of Directors of the corporation which shall consist of-
- (a) A Chairperson appointed by the Governor;
 - (b) Chief Officer from the Department of Finance and Economic Planning;
 - (c) Chief Officer from the Department of Trade;
 - (d) The County Attorney
 - (e) Two other members appointed by the Executive Committee Member in consultation with the Governor;
 - (f) The Chief Executive Officer who shall be an ex-officio member and secretary to Board.
- (2) A person is qualified for appointment as Chairperson or member of the Board of Directors if the person-
- (a) holds a degree from a University recognized in Kenya;
 - (b) has knowledge and experience of not less than five years in matters relating to investment, business, finance, economics or law;
 - (c) meets the requirements of Chapter Six of the Constitution
- (3) The term of office for members appointed under sub-section (1)(a) and (e) is three years which may be renewed for one other term.
- (4) Notwithstanding subsection (3), the members of the Board referred in subsection (3) are to retire on rotation in a manner that ensures that not more than two thirds of the members retire at the same time.
- (5) The membership of the Board shall meet the one-third gender rule.

Revocation of the appointment of a member of the Board of Directors

7. (1) Subject to the provisions of the any other written law, a member of the Board may be removed from office by the County Executive Committee Member or the Governor in the case of the chairperson if the person-
- (a) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (b) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (c) is convicted of an offence involving dishonesty fraud;
 - (d) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Corporation; or
 - (f) fails to comply with the provisions of this Act relating to disclosure.
- (2) Before a member is removed from office under paragraph 1(b) the member shall be given an opportunity to provide a defense of the allegations against him or her.

Functions of the Board of Directors

8. The functions of the Board are 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 functions of exercise of the powers and the performance of the functions of the Corporation;
 - (c) Approve the estimate of the revenue and the expenditure of the Corporation; and
 - (d) Perform such functions as are provided for under this Act or any other written law.

Conduct of Business of the Board of Directors

9. (1) Save as may otherwise be stated under this Act, the conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.
- (2) Except as provided in the schedule, the Board may regulate its own procedure.

Remuneration of the Board of Directors

10. The remuneration of the Chairperson and members of the Board shall be determined by the Salaries and Remuneration Commission.

Appointment of the Chief Executive Officer

11. (1) The Chief Executive Officer shall be appointed by the Board of Directors and shall be recruited through a competitive process.
- (2) The Chief Executive Officer shall serve a fixed renewable term of three years which term may be renewed for one other term.

Qualifications of the Chief Executive Officer

12. (1) A person is qualified for appointment as the Chief Executive Officer if the person:
- (a) holds a Bachelor's degree in finance, economics or accounting from a university recognized in Kenya;
 - (b) has a Master's degree;
 - (c) has knowledge and experience of at least five years in matters relating to Public administration, law, economics, finance and management
 - (d) meets the requirements of Chapter Six of the Constitution of Kenya; and
 - (e) has had a distinguished career in their respective fields.
- (2) The Chief Executive Officer shall be the principal executive officer of the Corporation and shall:
- (a) be the Accounting Officer of the Corporation;
 - (b) subject to the direction of the Board, responsible for day to day management of the affairs of the Corporation;
 - (c) responsible for the conduct of the affairs and transactions of the Corporation, the exercise, discharge and performance of its objectives, functions and duties and general administration of the Corporation, and
 - (d) carry out such other duties as may from time to time be assigned by the Board.
- (3) The Chief Executive Officer is an ex-officio member of the Board and has no right to vote at any meeting of the Board.
- (4) The terms and conditions of service of the Chief Executive Officer shall be determined by the Board of Directors in consultation with the County Public Service Board.

Staff of the Corporation

13. (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 in consultation with the County Public Service Board determine.
- (2) The staff appointed by the corporation shall reflect the regional and ethnic diversity of the County

Common Seal of the Corporation

14. (1) The Common Seal of the Corporation is Kept in the custody of the Managing Director or of such other person as the Board may direct and must 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, is to be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section is presumed to have been duly given.
- (3) The common seal of the Corporation is authenticated by the signature of the chairperson of the Board and/or the Chief Executive Officer.

Protection from Personal Liability

15. (1) No matter or thing done by a member of the Board or any other officer, member of staff, or agent of the Corporation is, if the matter or thing is done bona fide for execution of the functions, powers, or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.
- (2) Any expenses incurred by any person in any suit or prosecution brought against the person in any court, in respect of any act which is done or purported to be done by the person under the direction of the Board, must, if the court holds that such act was done bona fide be paid out of the funds of the Corporation, unless such expenses are recovered by the person in such suit or prosecution.

PART III – FINANCIAL PROVISIONS

Funds of the Corporation

16. (1) The funds and assets of the Corporation consists of –
- (a) Such monies as may be appropriated by County Assembly for the Corporation;
 - (b) Revenues and profits realized from the investments undertaken by the Corporation;
 - (c) Such gifts, grants or monies received from any lawful source of the Corporation;
 - (d) All monies borrowed from securities markets or received as loans to the Corporation; and
 - (e) any other way as may from time to time be approved by the Executive Committee Member.
- (2) The Corporation shall not take long term loans or borrow money by way of floating of bonds unless such borrowing is for purposes of capital investments.
- (3) Notwithstanding subsection (2), the Corporation may borrow short- term loans for maintaining purposes of working capital in accordance with Public Finance Management Act.
- (4) The Corporation must apply monies provided under this section for the furtherance of the objects and performance of the functions of the Corporation and as prescribed under this Act.
- (5) The Executive Committee Members shall prescribe regulations for subsection(2).

Financial Year

17. The financial year of the Corporation is the period of twelve months from 1st July ending on thirtieth June in each year.

Accounts

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

Annual Budget

19. (1) At least three months before the commencement of each financial year, the Corporation must cause to be prepared a budget of the Corporation for that year.
- (2) The annual budget makes provision for all estimated expenditure of the Corporation for the financial year and in particular, the estimates must provide for the-

- (a) allocation in respect of investments to be made;
 - (b) debt repayment schedule;
 - (c) payments 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;
 - (e) payment of pensions, gratuities, and other charges in respect of member of member of the Board and staff of the Corporation;
 - (f) proper maintenance of buildings, facilities 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 must be approved by the Board before the commencement of the financial year to which the budget relates.
- (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.

Financial Reports and Audit

20. (1) Within a period of three months after the end of each financial year, the Board must submit to the Auditor-General, the accounts of the Corporation together with-
- (a) A statement of the 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 statement applicable to similar institutions
- (2) The accounts of the Corporation must be audited and reported upon in accordance with the provisions of the Public Audit Act.

Annual Report

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

(2) The annual report must provide information regarding to the activities and plans of the Corporation during the year to which it relates sufficient to 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, must 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 materials as the Corporation may be required by this Act or regulations made thereunder to include in the annual report;
- (d) the financial statement prepared under section 21; and
- (e) such additional information or other material as the Executive Committee Member may request in writing.

(4) The Executive Committee Member must, within thirty days of receiving the annual report submit it to the County Executive Committee for its consideration.

(5) The County Assembly may after considering the report make recommendations to the Executive Committee Member.

PART IV-INVESTMENT MANAGEMENT

Investment Principles

22. Subject to the provisions of the Public Finance Management Act, 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

23. Subject to the provisions of the Public Finance Management Act and any other written law on governance of public investments, the Corporation has powers to-
- (a) establish subsidiaries or hold entities for any business venture for the purposes of realizing its objectives;
 - (b) invest in shares, property, real assets, bonds, securities, bank deposits, trust funds, Treasury Bills, or any investment venture approved by the Executive Committee Member.
 - (c) enter into partnership or collaboration with any entity for the purposes of carrying out the objectives of this Act.
 - (d) where the Corporation enters into partnership through the public private partnership business model, the law relating to public private partnerships must with necessary modifications apply.

PART VI-MISCELLANEOUS

Regulations

24. (1) The Executive Committee Member shall within twelve months from the date of enactment of this Act, on recommendation of the Board make Regulations generally for the better carrying out of the objects of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may-

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

Transition Provisions

25. Subject to approval by the County Executive Committee, the Executive Committee Member shall transfer such assets to the Corporation and second such number of staff for the purposes of implementing this Act.

SCHEDULE**(s.9)****Provisions for the conduct of the business and affairs of the Board****Meetings**

- (1) The Board must 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) Unless three quarters of the total members OF THE Board otherwise agree, at least fourteen days written notice of every meeting of the Board must be given to every member of the Board.
- (3) The quorum for the conduct of the business of the Board must be five members including the chairperson or the person presiding.
- (3) The chairperson shall preside at every meeting of the Board at which he is present but, but in his absence, the members present shall elect one of their members to preside, who must, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (4) Unless a unanimous decision is reached, a decision on any matter before the Board must 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 must have a casting vote.
- (5) no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Conflict of Interest

- (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 the member must, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and must not take part after the consideration or discussion of, or vote on, any questions with respect to the contract or discussion of, or be counted in the quorum of the meeting during consideration of the matter.
- (2) If the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations to the meeting, the Board may permit the member to participate in the deliberations, subject to such restrictions as it may impose but such member must not have the right to vote on the matter in question.
- (3) A member of the Board must be considered to have a conflict of interest to the purposes of this Act if he inquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.
- (4) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board must direct the member to refrain from taking part, or taking any further part, in the consideration of the matter.

- (5) If the chairperson has a conflict of interest he must, in addition to complying with the other provisions of this section, disclose the conflict that exists to the board in writing.
- (6) Upon the Board becoming aware of any conflict of interest, it must 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 must not vote on this determination.
- (7) 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 must resign unless the member has eliminated the conflict to the satisfactions of the Board with thirty days.
- (8) The Board must 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 conflicts has been eliminated to the satisfactions of the Board.
- (9) The annual report of the Board must disclose details of all conflicts of interest and determinations arising during the period covered by the report.
- (10) A disclosure of interest made under this paragraph must 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.

Code of Conduct

- (1) Within twelve months of commencement of this Act, the Board must adopt a code of conduct prescribing standards of behavior 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 must publish the proposed code or amendments in the Gazette and in newspaper circulating nationally, inviting public comments.
- (3) The Board must 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 must be binding on the Board and its staff.

Minutes

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

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the establishment of legal and institutional framework for investment in Kilifi County.

The Bill is set out in four parts as follows.

PART I of the Bill provides for the preliminaries, which include the short title and commencement date, interpretation of terms used in the Bill as well as the objects and purpose of the Bill.

PART II of the Bill provides for the establishment, composition and functions of an Investment and Development Corporation and a Board to manage its operations.

PART III of the Bill provides for the Financial provisions bearing provisions such as the Funds of the Corporation, Accounts, Annual Budget, Financial Reports and Audit and Annual Reports.

PART IV of the Bill provides for investment management principles and investment powers.

PART V of the Bill provides for miscellaneous matters which include regulations and conduct of business and affairs of the Board.

The enactment of the Bill will not occasion additional expenditure of public funds.

Dated the.....of 2019

Hon. Adamson Kadenge Mwathethe,
Leader of Majority,
County Assembly of Kilifi.