

**SPECIAL ISSUE**

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**TANA RIVER COUNTY GAZETTE  
SUPPLEMENT**

**ACTS, 2016**

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**NAIROBI, 31st October, 2016**

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**THE TANA RIVER COUNTY INVESTMENT AND  
DEVELOPMENT CORPORATION ACT, 2016**

**No. 19 of 2016**

*Date of Assent: 27th September, 2016*

*Date of Commencement: See Section 1*

**AN ACT of County Assembly of Tana River to provide for the  
establishment of legal and institutional framework for investment  
and development management and for connected purposes**

**ENACTED** by the County Assembly of Tana River, as follows—

**PART I—PRELIMINARY**

**Short title and Commencement**

1. This Act may be cited as the Tana River County Investment and Development Corporation Act 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;

“clerk” means the clerk of the county assembly;

“corporation” means the Tana River Investment and Development Corporation established under section 4;

“county executive committee” means the County Executive Committee of county government of Tana River;

“county executive committee member” means the county executive committee member for the time being responsible for finance;

“governor” means the Governor of Tana River County.

**Object and Purpose of this Act**

3. The object and purpose of this Act is to provide a legal and institutional framework for investment by 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) promote local economic development; and
- (e) enhance county revenue base.

## **PART II—THE INVESTMENT AND DEVELOPMENT CORPORATION**

### **Establishment of the Corporation**

4. (1) There is established a Corporation to be known as the Tana River 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 or 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 and no shares must be issued or allocated to any person.

### **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 investments and development;
- (b) undertake any investment on behalf of the county for the purposes of generating revenue for the county government;
- (c) undertake any development initiative for the county for business or social purposes;
- (d) identify strategic investment opportunities for the benefit of the county;
- (e) undertake business ventures for the benefit of the county;
- (f) promote local economic development and job creation; and
- (g) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other

functions as may, from time to time, be assigned by the Governor.

### **Board of the Corporation**

6. (1) The management of the Corporation vests in the Board of Directors which consists of—

- (a) a chairperson nominated and with the approval of the County Assembly, appointed by the Governor;
- (b) a vice-chairperson nominated and with the approval of the County Assembly, appointed by the Governor;
- (c) chief officer for the time being responsible for finance;
- (d) the chief officer for the time being responsible for trade;
- (e) four persons who are professionals qualified in economics, investment management, finance and accounting and law appointed by the County Executive Committee Member through a competitive process;
- (f) the Managing Director who must be an *ex-officio* member and secretary to the Board.

(2) A person is qualified for appointment as chairperson or vice-chairperson if the person—

- (a) is a citizen of Kenya;
- (b) holds a bachelors degree from a recognized university;
- (c) has knowledge and experience of at least five years in matters relating to investment, business, finance and accounts or law;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in the field.

(3) A person is qualified for appointment as a member under sub section (1) (f) if the person—

- (a) a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (c) has experience of at least three years;
- (d) meets the requirements of Chapter Six of the Constitution.

(4) The term of office for the chairperson, vice-chairperson or a member appointed under sub section (1) (f) is three years which may be renewed for one further term after which the person is to retire from the

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Board for at least two years before being eligible for reappointment to the Board.

(5) Notwithstanding subsection (4), the members of the Board are to retire on rotation in a manner that ensures that not more than two thirds of the members retire at the same time.

**Functions of the Board**

7. 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 performance of the functions of the corporation;
  - (c) approve the estimates of the revenue and expenditure of the Corporation; 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 is as set out in the Schedule.

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

**Remuneration of the Board**

9. The remuneration of the members of the Board is determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

**Managing Director**

10. (1) There is a Managing Director of the Corporation who is the accounting and chief executive officer of the Corporation.

(2) The Managing Director is appointed by the County Public Service Board on recommendation of the Board and recruited through a competitive process.

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

- (a) possess a degree from a recognized university;

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(b) have had experience in management for a period of not less than five years.

(4) The Managing Director holds office for a period of three years, on such terms and conditions as the Board may in consultation with the Salaries and Remuneration Commission determine, and may be eligible for re-appointment for a further and final term of three years.

(5) The Managing Director is an *ex-officio* member of the Board and has no right to vote at any meeting of the Board.

(6) The Managing Director—

(a) is subject to the direction of the Board, responsible for day to day management of the affairs of the Corporation;

(b) is in consultation with the Board, 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; and

(c) may carry out any other function as may from time to time be assigned by the Board.

(7) The Managing Director may—

(a) at any time resign from office by issuing notice in writing to the chairperson of the Board;

(b) be removed from office by the executive member on recommendation of the Board, for—

(i) serious violation of the Constitution or any other written law;

(ii) gross misconduct, whether in the performance of the functions of the office or otherwise;

(iii) physical or mental incapacity to perform the functions of office;

(iv) incompetence; or

(v) bankruptcy.

**Staff of the Corporation**

11. (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 Salaries and Remuneration Commission determine.

- (2) The Corporation must—
  - (a) recruit staff through a competitive process; and
  - (b) ensure that there are sufficient number of staff qualified in matters related to finance, investment analysis and management and project management.

### **The Common Seal of the Corporation**

12. (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 the Managing Director.

(4) The vice-chairperson may, in the absence of either the chairperson or the Managing Director, in any particular matter, authenticate the seal of the Corporation on behalf of either the chairperson or the Managing Director.

### **Protection from Personal liability**

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

(2) Any 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.

### **Liability for damages**

14. The provisions of section 13 must not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to the person, their property or any of the person's 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**

15. The Corporation must establish a framework for and implement corporate governance principles and practices applicable to similar entities.

**Annual Report**

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

(2) The annual report must 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, 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 material as the Corporation may be required by this Act or regulations made thereunder to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) the financial statements prepared under section 21;
- (f) report of the auditor-general prepared under section 21; and
- (g) such additional information or other material as the executive member may request in writing.

(4) The County Executive Committee Member must, within fourteen days of receiving the annual report submit it to the county executive committee who thereafter must within twenty one days transmit the report to the clerk for tabling before the county assembly for consideration.

(5) The county assembly may after considering the report make recommendations to the County Executive Committee Member on appropriate ways of effectively implementing the Act.

**PART III—FINANCES OF THE CORPORATION****Funds of the Corporation**

17. (1) The funds and assets of the Corporation consists of—

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

(2) The Corporation must apply the 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.

**Financial Year**

18. The financial year of the Corporation is the period of twelve months ending on the thirtieth June in each year.

**Annual Budget**

19. (1) At least three months before the commencement of each financial year, the Corporation must cause to be prepared 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) allocations for investments related to each business venture;
- (b) debt repayment schedule;
- (c) payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (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 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 must 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 must be submitted to the County Executive Committee for final approval.

(4) No expenditure must be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the County Executive Committee Member.

#### **Accounts**

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

#### **Financial Reports and Audit**

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

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

### **PART IV—INVESTMENT MANAGEMENT**

#### **Investment Principles**

22. The Corporation must 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 any written law on governance of public investments, the Corporation has powers to—

- (a) establish subsidiaries or holding entities for any business venture for the purposes of realizing its objectives; or
- (b) invest in property or real assets, bonds, securities, bank deposits, trust funds, Treasury Bills or any investment venture approved by the county Treasury.

**Raising Capital**

**24.** (1) Subject to the approval of the county executive committee, the Corporation may raise capital by way of—

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

(2) The Corporation must not borrow money by way of loans or floating of bonds 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 Public Financial Management Act, 2012.

**Investment Strategy and Plan**

**25.** (1) The Corporation must prepare at least ten-year investment strategy and plan which must be approved by the county executive committee.

(2) The investment strategy and plan must 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 member may prescribe.

(3) The Corporation must not undertake any investment unless such investment accords with the investment strategy and plan.

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

(5) The Corporation must prepare annual plans for implementing the investment plan and strategy.

#### **Investment or Project Appraisal and Financial Analysis**

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

#### **Sustainability, Profitability and Competitiveness**

27. (1) The Corporation must institute measures to ensure that—

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

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

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

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(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 Corporation—

- (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**

28. The Corporation must 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 member may from time to time prescribe.

**Partnership**

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

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(2) 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.

**Dividend Policy**

30. (1) The Corporation must in consultation with the executive member establish a dividend policy, which must be reviewed annually.

- (2) The dividend policy must stipulate among others for—
  - (a) the business conditions under which dividend is to be paid out;
  - (b) minimum percentage of annual dividend payout to the county government; and
  - (c) any other matter as the County Executive Committee Member prescribe.

**PART VI—MISCELLANEOUS****Regulations**

31. (1) The County Executive Committee Member shall within six 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 anything the guidelines for undertaking investment or project appraisal;
- (b) prescribe the matters related to dividend policy;
- (c) prescribe matters related to investment plan and strategy.

**Transfer of Assets**

32. Subject to approval by the county executive committee, the County Executive Committee Member must transfer such assets to the Corporation for the purposes of implementing this Act.

**SCHEDULE**

(s. 8)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND  
AFFAIRS OF THE BOARD****Vacation of Office**

1. 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 by the County Executive Committee Member or the Governor in the case of the chairperson or vice 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;
    - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Corporation; or
    - (vi) 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 defence of the allegations against him or her.

**Meetings**

3. (1) The Board must meet not less than four times in every financial year and not more than four months must 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 seven members must, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) 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.

(4) The quorum for the conduct of the business of the Board must be five members including the chairperson or the person presiding.

(5) The chairperson must preside at every meeting of the Board at which he is present but, in his absence, the members present must elect one of their numbers to preside, who must, 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 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.

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

#### **Conflict of Interest**

4. (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 must, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and must 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.

(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 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 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 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.

(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 or determination 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 satisfaction of the Board within thirty days.

(8) The Board must report to the County 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.

(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**

5. (1) Within twelve months of the commencement of this Act, the Board must 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 must publish the proposed code or amendments in the Gazette and in a 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.

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

**Execution of Interest**

6. 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.

**Minutes**

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