



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KAKAMEGA COUNTY ACTS, 2018

NAIROBI, 4th September, 2018

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**THE KAKAMEGA COUNTY INVESTMENT AND
DEVELOPMENT AGENCY ACT, 2018**

No. 4 of 2018

Date of Assent: 28th August, 2018

Date of Commencement: See Section 1

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SCHEDULES

**FIRST SCHEDULE—PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD
OF THE AGENCY**

**KAKAMEGA COUNTY INVESTMENT AND DEVELOPMENT
AGENCY ACT, 2018**

AN ACT of the County Assembly of Kakamega to provide for the establishment of a legal and institutional framework for promotion and co-ordination of investment by the county government of Kakamega and for connected purposes

ENACTED by the County Assembly of Kakamega, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Investment and Development Agency Act, 2018 and shall come into force upon publication.

Interpretation

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

“agency” means Kakamega County Investment and Development Agency established under section 4;

“board” means the Board of Directors of the Agency;

“competent legal authority” means a court of law, Ethics and Anti Corruption Commission or the Director of Public Prosecution;

“executive committee” means the Executive Committee of county government of Kakamega;

“executive committee member” means the Executive Committee Member responsible for trade;

“investment” means investing money or capital in order to gain profitable returns, as interest, income or appreciation in value;

Object and purpose

3. The object and purpose of this Act is to provide for a legal and institutional framework for investment by the County government in order to—

- (a) establish an efficient and effective framework for managing county government investments; and
- (b) co-ordinate and facilitate investments in the county.

PART II—THE AGENCY

4. (1) There is established an Agency to be known as the Kakamega County Investment and Development Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal and shall, 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.

5. The Agency shall—

- (a) hold property and assets on behalf of the County Government for the purposes of investment;
- (b) undertake investments on behalf of the County Government for the purposes of generating revenue;
- (c) identify strategic investment opportunities for the benefit of the County;
- (d) undertake investment ventures in partnership with other entities for the benefit of the County;
- (e) promote economic growth within the County;
- (f) advise the County Government on investment opportunities;
- (g) assist and facilitate investors to establish investments in the county; and
- (h) carry out such other roles and perform such other functions as may be necessary for the implementation of the object and purpose of this Act.

Board of the Agency

6. (1) The management of the Agency shall vest in a Board of Directors consisting of—

- (a) a non-executive chairperson appointed by the Governor;
- (b) chief officer responsible for planning and investment;

- (c) chief officer responsible for trade;
 - (d) the county attorney;
 - (e) four members appointed by the Executive Committee Member; and
 - (f) the Chief Executive Officer who shall be an *ex officio* member;
- (2) The chairperson under sub-section (1)(a) and the members of the Board under subsection (1) (e) shall be appointed from a list consisting of—
- (a) in the case of chairperson three names; and
 - (b) in the case of members eight names, submitted by a selection panel appointed by the Executive Committee Member in accordance with subsection.(3).
- (3) The selection panel referred to in subsection (2) shall comprise, a chairperson and four other persons appointed by the Executive Committee Member as follows—
- (a) a chairperson;
 - (b) one person to represent the County Public Service Board; and
 - (c) three persons from Kakamega County appointed by the Executive Committee Member with approval of the Executive Committee.
- (4) The selection panel shall have power to regulate its own procedure.
- (5) The selection panel shall advertise the vacancies and publicize the names of applicants and shortlisted candidates in at least one daily newspaper with national circulation.
- (6) In determining the nomination criteria for the chairperson and members of the Board, the selection panel shall have regard to the objectives of the development of County economic empowerment, ensuring that there are balanced competencies and gender equity.
- (7) In nominating the chairperson and members of the Board, the selection panel shall ensure that those nominated shall not have any conflict of interest in serving as chairperson or members of the Board.
- (8) If the Governor or Executive Committee Member as the case may be, rejects the names submitted under subsection (2) the Governor or

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Executive Committee Member shall inform the selection panel and request for a replacement.

(9) In rejecting the names submitted under subsection (2), the Governor or the Executive Committee Member, as the case maybe, shall attach a memorandum giving reasons for the rejection of the names.

(10) The selection panel shall stand dissolved after the appointment of the members of the Board.

Powers of the Board

7. The Board of Directors shall—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Agency;
- (b) approve the estimates of the revenue and expenditure of the Agency;
- (c) subject to approval of the Executive Committee, invest or divest in any venture;
- (d) subject to the approval of the Executive Committee, borrow money for investment ventures; and
- (e) perform such other functions as are provided for under this Act or any other written law.

Qualifications of chairperson and members of Board

8. (1) A person shall not be qualified for appointment as chairperson unless the person—

- (a) holds a bachelor's degree in a relevant field;
- (b) has experience of at least ten years in senior management in public or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment as a member of the Board under sub section 6(1) (e) unless the person—

- (a) holds a degree in economics, business, law, finance, accounting or any other related field from a recognized university;
- (b) has experience of at least 3 years in management; and
- (c) meets the requirements of Chapter Six of the Constitution.

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

(4) Notwithstanding the provisions of subsection (3) the Executive Committee Member shall before the appointment of the members of the Board under section 6(1)(e) determine by lot which one of their number shall vacate office after a period of two years to ensure continuity in the activities of the Board.

(5) All appointments under this section shall be by notice in the gazette.

Vacation of office of chairperson and board members

9. (1) Subject to the provisions of this Act the office of the chairperson or member of the Board shall become vacant if the chairperson or member of the Board—

- (a) resigns by notice in writing addressed to the appointing authority;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) if a member is absent without the permission of the chairperson of the Board for three consecutive meetings or if chairperson is absent for three consecutive meetings without the permission of the appointing authority;
- (f) fails to meet the requirements of chapter six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period exceeding six months; or
- (h) dies.

(2) Where the office of chairperson or a member of the Board becomes vacant the appointing authority may subject to the provisions of this Act, appoint another person to fill the vacancy.

(3) Notwithstanding the generality of the foregoing, the chairperson or any member of the Board suspected of having contravened Chapter 6 or 13 of the Constitution shall vacate office to pave way for investigations

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provided that where the chairperson vacates office under this subsection the appointing authority shall appoint an acting chairperson from among the members.

(4) Where a person who has vacated office under subsection (3) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to their respective positions.

(5) The First Schedule shall apply with respect to the conduct of the business and affairs of the Board.

Secretary of the Board

10. The Board shall appoint a suitably qualified person under the Certified Public Secretaries of Kenya Act, Cap 534 to be the secretary of the Board.

Remuneration of the Board

11. The chairperson and members of the Board shall be paid such allowances, as the County Public Service Board shall determine in line with the Salaries and Remuneration Commission guidelines.

Power to issue directions and remove Board

12. (1) The Governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the Governor may, if at any time it appears to him or her that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of chairperson and members of the Board and dissolve the Board and shall in consultation with the Executive Committee constitute a caretaker Board for a period not exceeding six months within which a new Board shall be constituted in accordance with section 6.

Chief executive officer No. 7 of 2017

13. (1) There shall be a Chief Executive Officer of the Agency who shall be appointed by the Governor from among three nominees recruited and recommended by the Board of Directors subject to the powers of the County Public Service Board under section 6 of the Kakamega County

Public Service Board Act, who shall serve for a period of four years which may be renewed once upon satisfactory performance.

(2) The Chief Executive Officer of the Agency shall be the accounting officer of the Agency and shall be responsible for the day to day management of the affairs of the Agency on such terms and conditions of service as the County Public Service Board shall determine in line with the guidelines of the Salaries and Remuneration Commission.

Qualifications of the Chief Executive Officer

14. A person shall qualify for appointment as a Chief Executive Officer, if the person—

- (a) possesses a bachelors degree or its equivalent from a university recognized in Kenya;
- (b) has at least five years' experience in investment management or related field; and
- (c) meets the requirements of chapter six of the Constitution.

Removal of Chief Executive Officer

15. The Chief Executive Officer may be removed from office by the appointing authority on recommendation of the Board if he or she—

- (a) is incapacitated by prolonged physical or mental illness;
- (b) is guilty of gross misconduct;
- (c) is incompetent or has neglected his or her duties;
- (d) is convicted of an offence and sentenced to imprisonment for a period exceeding six months;
- (e) has been adjudged bankrupt or enters into a composition or scheme of arrangement for the benefit of creditors;
- (f) fails to comply with the provisions of chapter six of the Constitution;
- (g) is found culpable on any other ground that would justify removal from office under the terms and conditions of service provided such removal process shall be in compliance with Articles 47 and 50 of the Constitution.

Other staff of Agency No. 7 of 2017

16. (1) Subject to powers of the County Public Service Board under section 6(3) of the Kakamega County Public Service Board Act, 2017, the

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Agency may employ such other staff as it may deem necessary for the performance of its functions under this Act.

(2) The County Public Service Board shall determine the remuneration of the other employees of the Agency in line with the Salaries and Remuneration Commission guidelines.

(3) All appointments under this section shall take into account gender equity and regional balance.

Common seal

17. (1) The common seal of the Agency shall be kept in the custody of the chief executive officer or 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 Agency, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any such order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Agency shall be authenticated by the signature of the chairperson of the Board and the chief executive officer.

(4) The Board shall in the absence of either the chairperson or the chief executive officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Agency on behalf of either the chairperson or the chief executive officer.

Protection from personal liability

18. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Agency shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Agency 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 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 bona fide be paid out of the funds of the Agency, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages

19. The provisions of section 18 shall not relieve the Agency 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.

PART III—FINANCIAL PROVISIONS RELATING TO THE AGENCY

Funds of the Agency

- 20 (1) The funds of the Agency shall consist of—
- (a) monies appropriated by the County Assembly for the purposes of the Agency; and
 - (b) loans, grants or donation to the Agency.
- (2) The Agency shall ensure that it makes full disclosure to the County treasury of any monies granted, donated or otherwise received by the Agency.

Financial year

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

Annual estimates

22. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Agency for that year.

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

- (a) allocations for investments related to each investment venture;
- (b) debt repayment;
- (c) payment of the salaries, allowances and other charges in respect of the staff of the Agency;
- (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 Agency;
- (f) maintenance, repair and replacement of the equipment and other property of the Agency; and

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- (g) creation of such reserve funds to meet future or contingent liabilities or such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Executive Committee Member, before the commencement of the financial year to which they relate after the Executive Committee Member has given approval, the Board shall not increase any sum provided in the estimates without the consent of the Executive Committee.

Accounts and audit

23. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Agency.

(2) 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 Agency in respect of that year together with a statement of the—

- (a) income and expenditure of the Agency during that year; and
- (b) assets and liabilities of the Agency on the last day of that financial year.

(3) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

Reports

24. (1) The Board shall prepare quarterly reports on the operations and administration of the Agency and provide to the Executive Committee Member quarterly statements.

(2) Notwithstanding sub-section (1) the Board shall prepare monthly reports and financial statements on the operations and administration of the Agency and submit the same to the Executive Committee Member.

(3) Within ninety days after the end of the financial year, the Board shall furnish the Executive Committee Member, with an annual financial report of the Agency for that year.

(4) Upon receipt of the annual report under subsection (3), the Executive Committee Member shall, in line with the budget cycle, facilitate its transmission to the County Assembly.

PART IV—INVESTMENT MANAGEMENT**Investment principles**

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

- (a) value for money;
- (b) prudence in financial management and investment;
- (c) competitiveness; and
- (d) sustainability.

Investment strategy and plan

26. (1) The Agency shall prepare a five-year corporate investment strategy and plan in line with the County Integrated Development Plan which shall be forwarded to the Executive Committee for approval.

(2) The investment strategy and plan shall provide 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 may prescribe.

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

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

(5) The Agency shall prepare annual plans for implementing the investment plan and strategy which shall be forwarded to the Executive Committee.

Investment project appraisal, etc

27. The Agency shall not undertake any investment or project unless it has undertaken an investment or project appraisal and financial analysis in accordance with the prescribed guidelines.

Sustainability, profitability, etc

28. (1) The Agency 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 Agency 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 Agency 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 Agency 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

29. The Agency shall maintain the prescribed—

- (a) asset base to enable it realize its objectives;
- (b) liquidity ratios;
- (c) debt service plan; and

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- (d) any other information that the Executive Committee Member may from time to time prescribe.

Regulations

30. The Executive Committee Member may make regulations generally for the better carrying out of the object and purpose of this Act.

FIRST SCHEDULE**(S.9 (5))****PROVISIONS AS TO THE CONDUCT OF THE BUSINESS
AND AFFAIRS OF THE BOARD**

1. The Board shall meet once in every three months.
2. The chairperson may at any time call a special meeting of the Board provided that such meetings shall not exceed four in a financial year.
3. The chairperson shall preside at every meeting of the Board at which he or she is present, but in the absence of the chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Board shall be five members.
5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. A member who has a personal interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.
8. The Board may constitute specialised committees provided that the decisions of the committees shall be subject to the approval of the Board.
9. The chief executive officer or an officer instructed by him or her in that behalf, present at a meeting of the Board or a committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the chief executive officer's or officer's opinion, is contrary to his or her advice or contrary to law.
10. Save as provided in this schedule the Board may regulate its own procedure.