

SPECIAL ISSUE

Kenya Gazette Supplement No. 17 (Garissa County Acts No. 6)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

GARISSA COUNTY ACTS, 2018

NAIROBI, 25th October, 2018

CONTENT

Act—	PAGE
The Garissa County Investment and Development Authority Act, 2018	1

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

**THE GARISSA COUNTY INVESTMENT AND DEVELOPMENT
AUTHORITY ACT, 2018**

No. 6 of 2018

Date of Assent: 19th October, 2018

Commencement Date: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short Title and commencement
- 2—Interpretations
- 3—Objects of the Act
- 4—Guiding Principles
- 5—Scope of Act
- 6—Application of Act

PART II—INVESTMENT PROTECTION

- 7—Protection of investment
- 8—Treatment
- 9—Security of investment
- 10—Principles relating to expropriation
- 11—Transfer of funds
- 12—Sovereign right to regulate public interest
- 13—Dispute resolution
- 14—Anti-avoidance

**PART III—ESTABLISHMENT AND MANAGEMENT OF AN
INVESTMENT AND DEVELOPMENT AUTHORITY**

- 15—Establishment of the Authority
- 16—Functions of the Authority.
- 17—Board of the Authority
- 18—Functions of the Board
- 19—Conduct of Business
- 20—Remuneration of the Board
- 21—The Chief Executive Officer
- 22—Staff of the Authority
- 23—The Common Seal of the Authority
- 24—Protection from personal liability
- 25—Liability for damages

- 26—Corporate Governance
- 27—Annual Reports
- 28—General Disqualification of all Board Members
- 29—Preservation for Secrecy
- 30—Declaration of Interests
- 31—Acquisition of land for the purpose of the Authority
- 32—Power to Enter and Survey Land
- 33—Power to take Water
- 34—Compensation
- 35—Limitation
- 36—Restriction on Execution against Property of the Authority
- 37—Committees of the Authority
- 38—Property of the Authority in the custody of employee
- 39—Regulations Relating to Staff

PART IV—FINANCIAL PROVISIONS

- 40—Funds of the Authority
- 41—Expenditure of the Authority
- 42—Financial Year
- 43—Annual Estimates
- 44—Accounts
- 45—Financial Reports and Audit

PART V — INVESTMENT ADMINISTRATION AND MANAGEMENT

- 46—Investment Strategy and Plan.
- 47—Appraisal and Financial Analysis
- 48—Sustainability, Profitability and Competitiveness.
- 49—Partnership
- 50—Investment certificate.
- 51—Incentives and Licenses Relating to an Investment Certificate.

PART VI — GENERAL PROVISIONS

- 52—Regulations
- 53—Transition Clauses

SCHEDULES

First Schedule—Provisions as to the conduct of business and affairs of the board

**THE GARISSA COUNTY INVESTMENT AND DEVELOPMENT
AUTHORITY ACT, 2018**

AN ACT of the County Assembly of Garissa to provide for the establishment of legal and institutional framework for promotion and coordination of investment and development; and for connected purposes

ENACTED by the County Assembly of Garissa as follows—

PART I — PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Garissa County Investment and Development Authority Act, 2018 and shall come into effect on such a date as the Governor may give by notice in the Gazette, and different dates may be appointed for the coming into effect of different sections as the County Executive Committee Member responsible for matters relating to investments shall determine.

This Act shall apply to all investments and development in Garissa County.

Interpretations

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

“Authority” means the Garissa County Investments Authority;

“Board” means the Board of the Authority

‘Clerk’ means the Clerk of the County Assembly.

“County” means Garissa County;

‘Council” means the County Economic and Social Council

“County Executive Committee” means the County Executive Committee of the Garissa County Government

“Department” means the Department for the time being responsible for Trade and Investment Promotion;

“Dispute” means a claim by either party that the other party has allegedly breached a provision(s) of this Act and that the party has incurred loss or damage by reason of, or arising out of that alleged breach;

“Executive Committee Member” means the County Executive Committee Member for the time being responsible for Trade and Investment Promotion.

“Entity” means any legal person, whether incorporated or unincorporated;

“Investment” includes the following assets held by an investor in the County:

- (a) An entity;
- (b) Marketable securities;
- (c) contractual rights;
- (d) movable and immovable property;
- (e) intellectual property rights;
- (f) rights conferred by law to carry out economic and commercial activities.

“Investor” means any person who holds an investment in the County;

“Native Investor” means any natural person who hails from Garissa County

“Party or Parties” means the investor or the County Government or both

“This Act” means the Investments and Development Authority Act, 2018;

Objects of the Act

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

- (a) Enhance financial and economic prudence in county government investment;
- (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) coordinate 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.

Guiding Principles

4. (1) In the exercise of the powers or the performance of the functions under this Act, the Authority shall be guided by the following principles—

- (a) Public participation and inclusivity;

- (b) Strategic partnership, collaboration and alliances with state and non-state actors including private enterprises and businesses;
- (c) Innovation;
- (d) Strategic management;
- (e) Public interest;
- (f) Value for money
- (g) Probity;
- (h) Gender parity, equity, equal opportunities and human rights;
- (i) Sustainability;
- (j) Integrity and professionalism
- (k) Socio-economic justice.

Scope of the Act

5. The scope of this Act is to—

- (a) promote and protect investment in a manner that is consistent with public interest and a balance between the rights and obligations of investors; and
- (b) ensure the equitable treatment of all investors in the County, subject to applicable legislation.

Application of the Act

6. (1) This Act shall apply to investments made, either before or after the commencement of this Act.

(2) This Act does not preclude the operation of any domestic legislation that is applicable to investments in the County.

(3) This Act does not preclude or affect the duty of the County government, the National Government or any organ of State, to take the measures contemplated in Section 9, including but not limited to, the operation of—

- (a) any existing taxation, legislative measures or provisions;
- (b) subsidies or grants provided by the County Government or any organ of State as defined in the Constitution;
- (c) government procurement regulations and guidelines;
- (d) any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area or common market to which Kenya is or may become a party; or
- (e) any special advantages accorded by Kenya to development finance institutions established for the purpose of development

assistance or the development of small and medium enterprises or new industries.

PART II— INVESTMENT PROTECTION

Protection of Investment

7. (1) The investment protection under this Act shall apply to all investors and their investments where those investments have been—

- (a) made in accordance with applicable legislation; and
- (b) acquired and used in the expectation, and for the purpose, of economic activity or other business purposes.

(2) This Act shall not be interpreted so as to create a right of establishment for investors or potential investors in the County.

3) The protection of local and foreign investment is subject to compliance with applicable domestic legislation and international agreements.

(4) A change in the legal form in which assets are invested or reinvested does not affect their character as investments under this Act, provided that the other criteria for local and foreign investments are met

Treatment

8. (1) Subject to existing legislation on affirmative action, the County shall give effect to fair treatment and treat foreign investors, their investments and returns not less favorably than it treats local investors in their business operations that are in like circumstances;

(2) Subject to applicable legislation an investor may conduct without restraint various activities of investment in the County;

(3) For the purposes of this section, "like circumstances" means the requirement for an overall examination on a case-by-case basis of all the terms of investment including, the following factors—

- (a) the effect of the investment on the County, including the cumulative effects of all investments;
- (b) the sector that the investment is in;
- (c) the aim of any measure relating to investments; and
- (d) other factors relating to the investor or the investment in relation to the measure concerned;

(3) The examination referred to in subsection (3) shall not be limited to or be biased towards any one factor.

Security of Investment

9. (1) The County government shall accord all investors and their investments and returns, equal level of security as may be generally

provided to all other investors and subject to available resources and capacity.

(2) An investor who suffers loss or damage resulting from—

- (a) requisitioning of their property by the authorities of the County or National Government; or
- (b) destruction of their property by the authorities of the County or National Government; or arising from civil commotion or was not required by the necessity of the situation, shall be accorded restitution or appropriate compensation by County or National Government as appropriate;

(3) Provided that such requisition or destruction by County or National Government does not arise due to any illegal activity by the investor.

Principles Relating to Expropriation of Investment

10. (1) An investment may not be expropriated except in accordance with the Constitution and in terms of a law of general application for public purposes or in the public interest, under due process of law, against just and equitable compensation effected in a timely manner.

(2) The following acts, which are not limited, do not amount to acts of expropriation—

- (a) a measure or series of measures taken by the County government that have an incidental or indirect adverse impact on the economic value of an investment;
- (b) a measure aimed at protecting or enhancing legitimate public welfare objectives, such as public health or safety, environmental protection or security;
- (c) the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international agreements on intellectual property; and
- (d) any measure which results in the deprivation of property but where the County does not acquire ownership of such property provided that—
 - (i) there is no permanent destruction of the economic value of the investment; or
 - (ii) the investor's ability to manage, use or control his or her investment in a meaningful way is not unduly impeded.

(3) The compensation contemplated in subsection (1) shall reflect an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances including—

- (a) the current use of the investment;
- (b) the history of the acquisition and use of the investment;
- (c) the market value of the investment; and
- (d) the purpose of the expropriation.

(4) The value calculated in accordance with subsection (3) shall be taken as the value of the investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, and shall include interest based on the mean rate published by the Central Bank of Kenya from the day of expropriation until the date of payment, and must be made without delay, and be effectively realisable.

(5) An investor affected by the expropriation has the right to a review by a competent court, including whether the valuation of his or her investment was done in accordance with the circumstances contemplated in subsection (3).

Transfer of Funds

11. Subject to any written law and applicable regulations relating to taxation and investments, a foreign investor may, in respect of any investment, transfer funds to any jurisdiction.

Sovereign Right to Regulate in the Public Interest

12. (1) The County Government and any organ of State may, in accordance with the Constitution, take measures—

- (a) to redress historical, social and economic inequalities;
- (b) to uphold the values and principles espoused in the Constitution;
- (c) to uphold the rights guaranteed in the Constitution;
- (d) to promote and preserve cultural heritage and practices, indigenous knowledge and biological resources related thereto or national heritage;
- (e) to foster economic development and;
- (f) to achieve the progressive realisation of socio-economic rights;

(2) The County Government and any organ of State, may take measures that are necessary for the fulfilment of the County's obligations with respect to the maintenance, compliance or restoration of international peace and security, or the protection of the essential security interests, including with respect to financial stability, of the Republic of Kenya.

Dispute Resolution

13. (1) An investor, who has a dispute in respect of action taken by the County Government where the action affected an investment of such investor, may request the County Government or any other competent authority to facilitate the resolution of such dispute by appointing a mediator or other competent body.

(2) The County Executive Member shall make regulations on the processes and procedures relating to the settlement of disputes contemplated in subsection (1).

(3) In order to facilitate a resolution of a dispute contemplated in subsection (1), the investor shall provide the following information—

- (a) name of the investor, contact details, including a physical address in the County, Personal Identification Number (PIN), email address or facsimile number and telephone number;
- (b) a summary of the claim, including the grounds giving rise to the dispute;
- (c) the specific details of the party who is alleged to be responsible for the events giving grounds on which the investor alleges a breach of any of the investment protection under this Act; and
- (d) the relief sought.

(4) Subsection (1) does not preclude an investor from approaching any court, competent independent tribunal or statutory body for the resolution of a dispute relating to an investment.

(5) An investor may refer an investment dispute to arbitration in accordance with the Arbitration Act.

Anti-avoidance

14. (1) If the County Executive Member for Trade considers that a transaction, agreement, arrangement, scheme, promise or understanding has been made or carried out by any person who has the sole or dominant purpose or the effect of circumventing the ambit of any provisions of this Act or any other written law; the County Executive Member may take such steps as is reasonable, within the scope of the law, to prevent such avoidance.

PART III—ESTABLISHMENT AND MANAGEMENT OF AN INVESTMENT AND DEVELOPMENT AUTHORITY

Establishment of the Authority

15. (1) There is established an Authority to be known as the Garissa County Investment and Development Authority.

(2) The Authority 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) making investments;
- (c) entering into contracts;
- (d) sue or be sued; 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 Authority shall be wholly owned by the county government and no shares shall be issued, transferred or allocated to any person.

Functions of the Authority

16. The Authority shall be responsible for—

- (a) holding property and assets on behalf of the county government for the purposes of investment and development;
- (b) undertaking investments on behalf of the county government for the purposes of generating revenue;
- (c) undertaking any development initiative for the county with a business or social purpose;
- (d) identifying strategic investment opportunities for the benefit of the county;
- (e) undertaking business ventures solely or in partnership with other entities or persons for the benefit of the county;
- (f) promoting local economic growth and job creation;
- (g) advising and facilitating the county government and county residents on investments opportunities within and outside the county;
- (h) assisting and facilitating investors from within or outside the county to establish investments in the county;
- (i) promoting and facilitating investment in the county;
- (j) acting as the focal agency for investment promotion and facilitation in the county;
- (k) advising the County Executive Member for Trade and the county executive committee on necessary policies, Programs and plans to be adopted in order to attract investments in the county; and
- (l) carrying out such other roles necessary for the implementation of the objects and purpose of this Act

Board of the Authority

17. (l) The management of the Authority shall vest in a Board which shall consist of—

2018

Garissa County Investment and Development Authority

No. 6

- (a) a non-executive chairperson who shall be appointed by the Governor.
- (b) the chief officer for the time being responsible for matters finance;
- (c) the chief officer for the time being responsible for matters trade and or investments;
- (d) two professionals appointed by the executive member in consultation with the Governor.
- (e) the Chief Executive Officer who shall be an ex-official member and secretary to the Board.

(2) The term of office for the chairperson or a member appointed under sub section (1) a and d shall be three years, and may be eligible for re-appointment for a further and final term of three years.

Functions of the Board

18. The functions of the Board shall be—

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Authority;
- (b) advise the management of the Authority generally on the exercise of the powers and the performance of the functions of the Authority;
- (c) approve the estimates of the revenue and expenditure of the Authority; and
- (d) perform such other functions as are provided for under this Act or any other written law.

Conduct of Business

19. (1) The conduct and regulation of the business 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

20. The remuneration of the members of the Board shall be as determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

The Chief Executive Officer

21. (1) There shall be a Chief Executive Officer of the Authority.

(2) The Chief Executive Officer shall be nominated by the Governor and with the approval of the county assembly, appointed by the Governor.

(3) To qualify for appointment as a Chief Executive Officer, a person

must—

- (a) a Kenyan citizen
- (b) possess a bachelor's degree in economics, law, business, accounting, finance or any other related field from a recognized university; and
- (c) have had experience in management for a period of not less than ten years.
- (d) meets the requirements of chapter six of the constitution

(4) The Chief Executive Officer shall hold office for a period of three years and may be eligible for re-appointment for a further and final term of three years.

(5) The Chief Executive Officer shall be an ex-official member of the Board but shall have no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall—

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

(7) The Chief Executive Officer may—

- (a) at any time resign from office by issuing notice in writing to the Governor;
- (b) be removed from office by the Governor 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 Authority

22. The Authority shall appoint such staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions

of service as the Board in consultation of the salaries and remuneration commission may determine

The Common Seal of the Authority

23. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive Officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board of the Authority.

(2) The common seal of the Authority, 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 Authority shall be authenticated by the signature of the chairperson of the Board or the Chief Executive Officer.

Protection from Personal Liability

24. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting of 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 Authority, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for Damages

25. The provisions of section 24 shall not relieve the Authority 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

26. The Authority shall establish and implement corporate governance principles and practices applicable to similar entities.

Annual Reports

27. (1) The Authority shall, within three months after the end of each financial year, prepare and submit to the executive member a report of the operations of the Authority for the immediate preceding year.

(2) The annual report prepared under sub section (1) shall provide information regarding the activities and plans of the Authority 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 Authority against its key performance indicators;
- (b) report on the overall status of the investment portfolio and profitability of each investment venture including the Authority's projections for the following year;
- (c) such information and other material as the Authority may be required by this Act or regulations made there under to include in the annual report;
- (d) measures taken to implement corporate governance principles and practices;
- (e) the financial statements prepared under section 44;
- (f) report of the Auditor-General prepared under section 45; and
- (g) such additional information or other materials as the Executive Member may request in writing.

(3) The Executive Member shall, within fourteen days of receiving the annual report submit it to the county executive committee and thereafter within twenty one days transmit it to the Clerk of the county assembly for tabling before the county assembly for consideration.

(4) The county assembly may after considering the report, make recommendations to the county executive committee on appropriate ways of effectively implementing this Act.

General Disqualification of All Board Members

28. (1) A person shall not be appointed as Chairperson, Chief Executive Officer or a member if the person—

- (a) is a member of the National Assembly or a member of a County Assembly established under the County Governments Act;
- (b) is a salaried employee of any public entity
- (c) does not fulfill the requirements of Chapter 6 of the Constitution.

(2) The provisions of sub section 1 (b) shall not apply in the case of the representative of the County Executive Member for Trade or County Executive Member for Finance;

(3) The Governor shall terminate the appointment of the Chairperson and the Chief Executive Officer whereas the Executive Member shall do so in the case of the board members who—

- (a) becomes subject to any of the disqualifications described in subsection (1);
- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or otherwise declared to be of unsound mind;
- (e) is absent, without the leave of the Board from three consecutive meetings of the Board;
- (f) becomes, for any reason, incapable or incompetent of properly performing the functions of his office;
- (g) is in breach of any of the requirements of Chapter 6 of the Constitution.

Preservation of Secrecy

29. (1) Except for the purpose of the performance of his duties or the exercise of his powers, the Chairperson, Chief Executive Officer, member(s) of the board or any other officer or employee of the Authority shall not disclose any information which he has acquired in the performance of his duties or the exercise of his powers.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both, in addition to any disciplinary action which may be taken by the Board.

Declaration of Interest

30. (1) The Chairperson, Chief Executive Officer and any member shall declare his or her interest in any specified proposal being considered or to be considered by the Board.

Acquisition of Land for Purposes of the Authority

31. (1) Where land is required by the Authority for the purpose of fulfilling any other function under this Act, it may, either—

- (a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof: Provided that notwithstanding the provisions of section 6 of the Land Control Act (Cap.302), the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or
- (b) if such land is public land, or if the Authority is unable to acquire it by agreement in accordance with paragraph (a) of this subsection, notify the National Land Commission that the land

specified in the notice is required for the purposes of the Authority.

- (2) When notice has been given under subsection (1) (b), then—
- (a) if the land is public land, the National Land Commission may, in its discretion and upon such terms and conditions as it may think fit, place such land at the disposal of the Authority for the purposes of the Authority;
 - (b) if the land is not public land, any provision in any written law which empowers the National Land Commission to acquire or direct the acquisition of such land for any specific purpose shall be deemed to include a power enabling the President or the National Land Commission to acquire or direct the acquisition of such land for the purposes of the Authority.

(3) Where any compensation is payable to any person in respect of any land, specified in the notice given under subsection (1)(b), acquired by the National Land Commission, and such land after being so acquired is placed at the disposal of the Authority in accordance with subsection (2)(a), the amount of compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Authority.

(4) The Authority may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration; provided that land which was public land or community land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the National Land Commission shall consent and so direct.

(5) The provisions of subsection (4) shall apply to land vested in the Authority by any written law, including this Act, as well as land conveyed to it or otherwise placed at its disposal.

(6) In this section— "public land" means all public land in Kenya, excluding trust land, which is vested in the Government for public purposes or for the purposes of the Authority or its predecessors in title and for the purposes of the provisions of subsection (4) includes land previously so vested.

Power to Enter and Survey Land

32. (1) Any authorized employee may, for the purpose of fulfilling any other function of the Authority under this Act, upon giving reasonable notice to the person in occupation of the land, enter upon any land and survey such land or any portion thereof.

(2) Where any damage to land is caused, by reason of the exercise of the powers conferred by subsection (1), the owner or occupier of the land shall be entitled to compensation thereof in accordance with this Act.

Power to take water

33. The Authority may, for the purpose of fulfilling any other function under this Act, take any water from any natural watercourse or other water bodies in accordance with the provisions of the law regulating the taking of such water.

Compensation

34. (1) In the exercise of the powers conferred by section 32 and 33, the Authority shall do as little damage as possible; and, where any person suffers damage, no action or suit shall lie but he shall be entitled to such compensation therefore as may be agreed between him and the Authority or, in default of agreement, as may be determined by the High Court.

(2) Nothing in this section shall be construed as entitling any person to compensation—

- (a) for any damage suffered unless he would have been entitled thereto otherwise than under the provisions of this section; or
- (b) for any damage suffered as a result of the user of any works authorized under this Act unless such damage results from negligence in such user.

Limitation

35. Where any action or other legal proceeding is commenced against the Authority for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Chief Executive Officer by the plaintiff or his agent; and
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months after the act, neglect or default complained of or, in the case of continuing injury or damage, within six months next after the cessation thereof.

Restriction on Execution Against Property of the Authority

36. (1) Notwithstanding anything to the contrary in any law—

- (a) where any judgment or order has been obtained against the Authority, no execution or attachment, or process in the nature thereof, shall be issued against the immovable property of the Authority or any of its vehicles, or its other operating equipment, machinery, fixtures or fittings; but the Chief Executive Officer shall cause to be paid out of the revenue of the

Authority such amount as may, by the judgment or order, be awarded against the Authority to the person entitled thereto;

- (b) no immovable property of the Authority or any of its vehicles, or its other operating equipment, machinery, fixtures or fittings, shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Chief Executive Officer.

Committees of the Authority

37. (1) The Authority may establish such committees and *ad hoc* committees as it may deem necessary for the performance of its functions.

(2) Membership of the committees established under sub section (1) shall comprise members of the Authority and experts from both public and private sectors.

(3) The Authority may either generally or in any particular case; delegate to any committee established under sub section (1) the exercise of any of the powers or the performance of any of the functions of the Authority under this Act and the committee shall report to the Authority on its activities.

(4) A committee established under sub section (1) may invite experts from research, academia and industry to attend its meetings to advise on any matter before the committee and the final recommendations for presentation to the Authority.

Property of the Authority in the custody of employee

38. (1) Where any employee dies or leaves the service of the Authority and, at the time of such death or termination of service, any property of the Authority was in his possession or custody or any premises of the Authority were occupied by him, it shall be the duty of such employee or, in the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable to deliver such property to the Authority or to vacate such premises, as the case may be.

(2) If any property or premises to which subsection (1) applies is not delivered to the Authority or vacated, as the case may be, the Chief Executive Officer shall give notice in writing to the person appearing to him most likely to be in possession of such property or in occupation of such premises to deliver to the Authority such property or vacate such premises within such time as may be specified in the notice; and if such property is not so delivered or such premises are not so vacated within such time, the Chief Executive Officer may, without prejudice to any other means of recovery, apply to a magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property if found to the Authority or, as

the case may require, to evict from such premises any person found therein.

Regulations relating to staff

39. (1) Subject to this Act, the Board may make regulations generally relating to the conditions of service of employees and without prejudice to the generality of the foregoing, may in particular make regulations relating to—

- (a) the grant of pensions, gratuities and other retiring allowances to employees and their dependents and the grant of gratuities to the estate or dependents of deceased employees;
- (b) the establishment and maintenance of risk funds, superannuation and provident funds and the contributions payable thereto and the benefits receivable therefrom;
- (c) the liability or otherwise to assignment, attachment, sequestration or other levy of sums payable to an employee or other persons under regulations made under this section.

PART IV — FINANCIAL PROVISIONS

Funds of the Authority

40. (1) The funds and assets of the Authority shall consist of—

- (a) such moneys as may be appropriated by county assembly for the purposes of the Authority;
- (b) revenues realized from investments undertaken by the Authority;
- (c) such gifts, grants or monies received from any lawful source;
- (d) monies borrowed or received as loans by the authority

(2) The Authority shall invest any surplus of funds received by it for the benefit of development in the County as the Board may direct.

(3) The Authority shall not borrow money or float any bonds unless such borrowing is related to capital investments and is approved by the Board.

(4) Notwithstanding subsection (3), and subject to the approval by the Board, the Authority may borrow short-term loans for the purposes of maintaining sufficient cash flow in accordance with Public Financial Management Act, 2012.

(5) Except as provided in this section, the Authority shall not give or execute any mortgage or charge over any of its property or assign its property by way of security for borrowed money.

Expenditure of the Authority

41. There shall be paid from the funds of the Authority —

- (a) operational expenses incurred in the administration and operations of the Authority and its Board; and
- (b) monies as are necessary for the functioning of the Authority.

Financial Year

42. (1) The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates

43. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared annual estimates of the Authority for that year .

(2) The annual budget shall make provisions for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall 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 Authority;
- (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 Authority;
- (f) proper maintenance of the buildings and grounds of the Authority;
- (g) maintenance, repair and replacement of the equipment and other property of the Authority; 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.

(4) No expenditure shall be incurred for the purposes of the Authority 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 member.

Accounts

44. The Board shall cause to be kept proper books and records of

accounts and assets of the Authority.

Financial Reports and Audit

45. (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 Authority 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 Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

PART V — INVESTMENT ADMINISTRATION AND MANAGEMENT

Investment Strategy and Plan

46. (1) Subject to the leave of the Board, the Authority shall prepare and submit to the County Executive Committee Member for approval a three-year corporate investment strategy plan which shall provide among others—

- (a) the source of investment capital;
- (b) targeted investment opportunities;
- (c) investment portfolio;
- (d) expected return on capital or investments established;
- (e) specific investment projects and their respective project appraisals including rate of return on investment or capital employed;
- (f) estimated cost of each investment to be made; and
- (g) any other matter as the Executive Committee Member may prescribe.

(2) The Authority shall not undertake any investment unless it is in accordance with the investment strategy and plan prepared under sub section (1).

(3) The Authority may, in each year, review the investment strategy and plan to align it with the prevailing market and investment trends.

(4) The Authority shall prepare annual plans for implementing the investment plan and strategy.

Appraisal and Financial Analysis

47. The Authority 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 and Competitiveness

48. (1) The Authority shall establish and maintain such measures so as to ensure that its—

- (a) financial and liquidity ratio is maintained;
- (b) operations and investments are sustainable and profitable; and
- (c) Investment ventures are competitive and economical for the benefit of the County.

(2) The Authority 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, at any time, require the Authority to undertake an assessment relating to any investment venture where he or she is of the opinion that the venture does not meet the required threshold for sustainability, profitability or competitiveness.

(4) The Executive Committee Member may, in consultation with the Authority, 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 Authority may:

- (a) restructure the investment;
- (b) merge the investment with another investment; or
- (c) terminate the investment by way of selling, disposing of, transfer or liquidating the investment where the investment was being carried out by a subsidiary as a sole business.

Partnership

49. (1) The Authority may enter into partnership or collaboration with any entity for the purposes of carrying out the objects of this Act.

No. 15 of 2013

(2) Where the Authority enters into partnership through the public private partnership business model, the law relating to public private partnerships must with necessary modifications apply.

Investment Certificate

50. (1) Any local or foreign investor who intends to invest in the County shall apply to the Authority for an investment certificate.

(2) The Authority shall prescribe in the regulations the form of application and conditions for an investment certificate.

Incentives and Licenses Relating to an Investment Certificate

51. (1) The Authority shall specify in regulations the incentives that an investment certificate holder may be entitled to.

(2) An investment certificate shall set out the licenses that the holder requires to carry out the proposed investment in the County and the certificate holder shall be issued with such license on application and payment of the prescribed fee.

PART VI — GENERAL PROVISIONS

Regulations

52. (1) The Executive Committee Member may, in consultation with the Authority, make regulations generally for the better carrying out of the objects and provisions of this Act.

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

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

Transfer of assets

53. The county executive committee shall identify assets and properties owned by the County Government that shall be transferred to the Authority for the purposes of implementing this Act.

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

Vacation from Office

1. (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 Governor in the case of the Chairperson and the Chief Executive Officer or the executive member for the other board members, if the person—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is found to have committed gross misconduct
 - (iii) Commits serious violation of the Constitution or any other written law.
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (v) is convicted of an offence involving dishonesty or fraud;
 - (vi) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (vii) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Authority; or
 - (viii) fails to comply with the provisions of this Act relating to disclosure.

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 sub paragraph (1), the chairperson may, and upon requisition in writing by at least three members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of, every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be a third of the 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 person among themselves to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

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

Conflicts 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 the chairperson or the member shall, at the meeting and as soon as; practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter; provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose, but such person 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.

(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 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 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 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 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.

(a) 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 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

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.