

# **PROMOTION AND PROTECTION OF INVESTMENT BILL, 2015**

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## **PROMOTION AND PROTECTION OF INVESTMENTS BILL 2015**

**A Bill for:-**

**An Act of Taita Taveta County to provide for the legislative promotion and protection of investors; to achieve a balance of rights and obligations that apply to all investors; and to provide for matters connected therewith.**

**ENACTED** by the County Assembly of Taita Taveta as follows:-

### **PART I - PRELIMINARY**

#### **1. Short Title and Commencement**

**This Act may be cited as the Promotion and Protection of Investments Act 2015 and shall come into effect on such a date as the Governor may by notice in the Gazette, appoint; 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.**

1.1 This Act shall apply to all investments in Taita Taveta County

#### **2. Definitions**

2.1 In this Act, unless the context otherwise requires:

“Authority” means the Taita Taveta County Investments Authority;

"Board" means the Board of Directors of the Authority

"County” means Taita Taveta County;

“Council” means the County Economic and Social Council

“County Executive Committee” means the County Executive Committee of the Taita Taveta 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 Taita Taveta County

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

"This Act" means the Promotion and Protection of Investments Act, 2015;

### **3. Objects of the Act**

- (a) Establish an enabling environment for investment in the County; ‘
- (b) Enhance competitiveness in investments;
- (c) Protect and promote local and foreign investments
- (d) Promote economic and social development;
- (e) Expand the County revenue base; and
- (f) Facilitate public private partnerships and joint ventures by the County through enabling structures.

### **4. Guiding Principles**

- (1) In the exercise of the powers or the performance of the functions under this Act, the County Executive Committee Member and 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) Probity;
- (g) Gender parity, equity, equal opportunities and human rights;
- (h) Sustainability;
- (i) Integrity and professionalism
- (j) Socio-economic justice.

## **5. Interpretation of the Act**

This Act shall be interpreted and applied with due regard to:

- (a) The Constitution of Kenya;
- (b) All laws related to investment and their regulatory requirements;

## **6. Scope of the Act**

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.

## **7. Application of the Act**

- (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 10, 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**

### **8. Protection of Investment**

- (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.

### **9. Treatment**

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

## 10. Security of Investment

- (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.

## 11. Principles Relating to Expropriation of Investment

- (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 factors contemplated in subsection (2).

## **12. Transfer of Funds**

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.

## **13. Sovereign Right to Regulate in the Public Interest**

- (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, realisation and beneficiation; 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.

#### **14. Dispute Resolution**

- (1) An investor, who has a dispute in respect of action taken by the County Government which action affected an investment of such investor, may request the Department or any other competent authority to facilitate the resolution of such dispute by appointing a mediator or other competent body.
- (2) The CECM 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) Contact details, including a physical address in the County, Personal Identification Number (PIN), email address, 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.

#### **15. Anti-avoidance**

- (1) If the CECM Trade considers that a transaction, agreement, arrangement, scheme, promise or understanding has been made or carried out by any person, 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 CECM may take such steps as is reasonable, within the scope of the law, to prevent such avoidance.

## **PART III – INVESTMENT PROMOTION**

### **16. Establishment of the County Economic and Social Council**

1. There is established a Council to be known as the County Economic and Social Council
2. The County Economic and Social Council – CESC is an advisory organisation to the County Government of Taita Taveta that shall, subject to the provisions of this Act:
  - (i) provide timely, accurate and independent economic and social advice to improve the management of the County economy and matters connected therewith;
  - (ii) be a standing committee comprising eminent people with diverse experience, knowledge and skills and will be chaired by the Governor.
  - (iii) be mandated to provide expert advice on economic and social matters to the Governor and the County Executive Committee;
  - (iv) bring together expertise, experience, and distinguished service in diverse fields, Counties and countries, medical practitioners, social scientists, economists, engineers, industrialists ,ICT specialists and other business and public service professionals;
  - (v) at its forum identify, discuss and recommend appropriate action on policy issues;
  - (vi) monitor and assess County Government investment programs and policies;
  - (vii) as an advisory body, recommend to the County Executive Committee, policies that deliver social equity, economic growth, wealth and employment creation.

### **17. Composition of the Council**

- (1) The Council shall consist of not more than 5 independent members and who shall serve for a term of four years renewable for one further term of four years.
- (2) The members of the Council shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.
- (3) A member of the Council may resign his office by writing under his hand addressed to the Governor which resignation shall take effect one month from the date of receipt of the letter of resignation and approval by the Governor.
- (4) If a member dies or resigns or otherwise vacates office before the expiry of his term of office, the Governor shall appoint another person in his place.
- (5) Where a member is unable to perform the function of his office due to any temporary incapacity which is likely to be prolonged, the Governor may appoint a substitute for

that member of the Council to act with the full powers of the member until such time as the Governor determines that his incapacity has ceased.

- (6) A person shall be eligible to be appointed a Council member if he:
- (a) is an eminent person with diverse experience mentioned in 16.2(iv) with not less than 15 years working experience except in emerging fields
  - (b) fulfills the requirements of Chapter Six of the Constitution.

### **18. Meetings of the Council**

- (1) The Governor shall convene meetings of the Council not less than once in every six months, or whenever the business of the County so requires, or whenever he is so requested in writing by at least three Council members. The meetings shall not exceed more than six in a financial year.
- (2) The Governor shall preside at all meetings of the Council. The Deputy Governor shall preside at the meeting of the Council in the absence of the Governor and in absence of both the Governor shall in writing appoint a CECM to preside over the meeting.
- (3) The Council shall regulate its own procedure.

### **19. Establishment of the Authority**

- (1) There is established an Authority to be known as the Taita Taveta County Investment 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) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
  - (c) receiving, borrowing and lending money;
  - (d) entering into contracts; and
  - (e) doing or performing any act which may lawfully be done or performed by a body corporate for the proper performance of its functions under this Act.

## **PART IV – MANAGEMENT OF THE AUTHORITY**

## **20. Board of Directors**

There shall be a Board of Directors of the Authority, constituted as provided in section 20 which shall, subject to the provisions of this Act, be responsible for:

- (a) determining the policy of the Authority;
- (b) determining the objectives of the Authority, including oversight for its financial management and strategy;
- (c) keeping under constant review the performance of the Authority in carrying out its functions;
- (d) keeping under constant review the performance of the Managing Director in discharging the responsibility of that office;
- (e) keeping under constant review the performance of the Managing Director in ensuring that the Authority achieves its Objectives; and
- (f) keeping under constant review the use of the Authority's resources.

## **21. Constitution of the Board**

- (1) The Board shall consist of: -
  - (a) a Chairman;
  - (b) a Managing Director who shall be a non-voting member;
  - (c) the County Executive Committee Member for Finance or his representative.
  - (d) the County Executive Committee Member for time being responsible for Trade and investment promotion or his representative
  - (e) the County Attorney who shall be an ex-officio member;
  - (f) six other non-executive directors.
- (2) The chairperson and directors appointed under paragraph (f) of subsection (1) shall be appointed by the Governor with the approval of the County Assembly and shall hold office for a period of four years but shall be eligible for re-appointment for one further term of four years.
- (3) The chairperson shall be appointed by the Governor through a transparent and competitive process and with the approval of County Assembly, and shall hold office for a term of four years but shall be eligible for reappointment for one further term.
- (4) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.

- (5) A member of the Board may resign his office by writing under his hand addressed to the Governor which resignation shall take effect one month from the date of receipt of the letter of resignation by the Governor.
- (6) If the Chairperson, the Managing Director or a director dies or resigns or otherwise vacates office before the expiry of his term of office, the Governor shall appoint another person in his place.
- (7) Where the Chairperson, the Managing Director or a director is unable to perform the function of his office due to any temporary incapacity which is likely to be prolonged, the Governor may appoint a substitute for that member of the Board to act with the full powers of the member until such time as the Governor determines that his incapacity has ceased.
- (8) A person shall be eligible to be appointed a Director if he:
  - (a) is a citizen of Kenya; and
  - (b) is knowledgeable or experienced in business, financial, investment and economic matters or other disciplines relevant to the functions of the Authority.

## **22. Meetings of Board**

- (1) The Chairperson shall convene meetings of the Board not less than once in every two months, or whenever the business of the Authority so requires, or whenever he is so requested in writing by at least three directors.
- (2) The Chairperson shall preside at all meetings of the Board
- (3) In the absence of the Chairperson at a meeting, the members present shall elect one of the members appointed under paragraph (f) of section 20 (1) to preside at that meeting of the Board.
- (4) The directors appointed under section 20(1)(f) shall elect one from amongst their number to preside at the meetings of the Board until a chairperson is appointed.
- (5) A quorum for any meeting of the Board shall be the Chairperson, the Managing Director, at least one CECM and three directors.
- (6) Decisions of the Board shall be adopted by a majority of the votes of those present at that meeting and in case of an equality of votes the Chairperson or the person presiding at the meeting shall have a second or casting vote.
- (7) The validity of any proceedings of the Board shall not be affected by any vacancy in the membership of the board, or by any defect in the appointment or disqualification of any member which is discovered subsequent to those proceedings.
- (8) A Director who is interested in any matter involving the Authority, or in the exercise or

proposed exercise by the Authority of a power, shall declare that interest at every meeting of the Board at which that matter or the exercise or proposed exercise of the power, is considered by the Board, and the director shall not be entitled to attend and vote, or be counted in a quorum present, at a meeting at which the matter or the exercise or proposed exercise of the power in which the Director has interest is considered.

### **23. Delegation by the Board**

- (1) The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member thereof, or to any officer, employee or agent of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or any other written law.

### **24. Managing Director**

- (1) There shall be a Managing Director who shall be appointed by the Governor through a transparent and competitive process and with the approval of the County Assembly.
- (2) The Managing Director shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.
- (3) The Managing Director shall be the chief executive officer of the Authority and, subject to the general policy decisions of the Board, shall be responsible for the management of the Authority, including the organization, appointment and dismissal of the staff in accordance with the general terms and conditions of service established by the Board; the Managing Director shall have authority to incur expenditure for the Authority within the administrative budget approved by the Board.
- (4) The Managing Director shall be the principal representative of the Authority and shall, in that capacity have authority:-
  - (a) to represent the Authority in its relations with other public entities, persons or bodies;
  - (b) to represent the Authority, either personally or through counsel, in any legal proceedings to which the Authority is a party;
  - (c) to sign individually or jointly with other persons contracts concluded by the Authority, reports, balance sheets, and other financial statements, correspondence and other documents of the Authority.
- (5) The Managing Director may delegate any of his powers provided for in this section to other officers of the Authority.

### **25. Common Seal And Power of Attorney**

- (a) The affixing of the common seal of the Authority shall be authenticated by the signatures

of the Chairman or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Authority authorized generally or specially by the Board to act for the purpose.

- (b) The Managing Director may, under the common seal of the Authority, and subject to the general or special authority of the Board, empower any person to execute or authenticate on behalf of the Authority any documents on its behalf.

## **26. General Disqualification of All Board Members**

- (1) No person shall be appointed as Chairperson, Managing Director or a director who is:-
  - (a) a member of the National Assembly or a member of a County Assembly established under the County Governments Act;
  - (b) a salaried employee of any public entity (except on a secondment basis);
  - (c) does not fulfil the requirements of Chapter 6 of the Constitution.

Provided that:-

- (i) paragraph (b) shall not apply in the case of the representative of the CECM Trade or CECM Finance; and
  - (ii) the Governor may in exceptional cases waive any of the above provisions with respect to any director (other than the Managing Director) if it is in the interests of the Authority and likely to promote the objects of the Authority under section 29
- (2) The Governor shall terminate the appointment of a Chairperson, Managing Director or a director 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.

## **27. Remuneration**

- (1) The Managing Director and any substitute appointed under section 20(6) or 20(7) shall

be paid by the Authority such salaries and allowances as may be determined from time to time by the Governor in consultation with the Salaries and Remuneration Commission, but those salaries and allowances shall not be altered to the detriment of any person during his term of office.

- (2) The directors and any substitute appointed under section 20(6) or 20(7) shall be paid by the Authority such allowances as may from time to time be determined by the Governor in consultation with the Salaries and Remuneration Commission.

## **28. Preservation of Secrecy**

- (1) Except for the purpose of the performance of his duties or the exercise of his powers, the Managing Director, any director 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.

## **29. Declaration of Interest**

- (1) The Managing Director and any director shall declare his interest in any specified proposal being considered or to be considered by the Board.

## **30. Functions of the Authority**

- (1) The functions of the Authority shall be to promote and facilitate investment in the County by:
  - (a) assisting foreign, local and potential investors to establish in the County; and
  - (b) Identifying and considering policy issues relating to investment and social development and recommend potential investment strategies to the County Executive Committee.
- (2) Without prejudice to the generality of sub section (1), the Authority shall do the following:
  - (a) monitor and assess County Government investment and social development programs and activities and resolve any existing gaps;
  - (b) assist any foreign, local or potential investor to obtain the necessary license and permit to establish any investment in the County;
  - (c) create a forum in which the County Government and private sector can discuss and identify investment and social development policy issues and recommend to the County Government;

- (d) Invest on behalf of the County Government
- (e) Enter into Strategic Partnership and agreements with authority from the County Government
- (f) gather, analyse and compile information on economic developments and trends and submit the information to the relevant Executive Committee Member with the appropriate recommendations;
- (g) appraise the various investment and social development programs and activities to determining the extent to which those programs and activities contribute to the achievement of County Government policy objectives;
- (h) advise and facilitate the County residents on investment opportunities within and outside the County;
- (i) develop coordinated policies and programs required to promote social equity, economic growth, the creation of employment, reduction of poverty and containment of inequality and recommend to the relevant Executive Committee Member;
- (j) develop strategic programs and activities focused on critical social and economic needs in the County especially in areas that have direct impact on strengthening the potential of creation of employment by the private sector and local communities and address poverty reduction;
- (k) utilize the private sector, civil societies and local communities capacities and synergy to promote efficiency and effectiveness of economic planning and social development;
- (l) promote local economic growth and job creation in the County;
- (m) advise the relevant County Executive Committee Member on necessary policies, programs and plans to be adopted in order to attract investments in the County;
- (n) generally carry out any activity that is necessary for the enhancement of economic and social development in the County .

### **31. Acquisition of Land for Purposes of the Authority**

- (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 proviso subsection (4) includes land previously so

vested.

### **32. Power to Enter and Survey Land**

- (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.

### **33. Power to Take water**

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

### **34. Compensation**

- (1) In the exercise of the powers conferred by section 30 and 31, 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.

### **35. Limitation**

- (1) 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 Managing Director by the plaintiff or his agent;

- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next 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.

### **36. Restriction on Execution Against Property of The Authority**

- (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 Managing Director 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 Managing Director.

### **37. Committees of the Authority**

- (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.

### **38. Property of the Authority in the custody of employee**

- (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 Managing Director 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 Managing Director 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.

### **39. Regulations relating to staff**

- (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 dependants and the grant of gratuities to the estate or dependants 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 V — FINANCIAL PROVISIONS**

### **40. Authority to apply commercial principles**

- (1) It shall be the duty of the Authority to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its gross revenue is not less than sufficient to meet its outgoings which are properly chargeable to the revenue account including proper allocations to the general reserve and provision in respect of depreciation of capital assets, pension liabilities and

interest and other provision for the repayment of loans and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by the Authority of such a percentage as the CECM for Finance may, from time to time, direct.

(2) For the purposes of subsection (1)—

(a) "net operating income" shall be determined by subtracting from gross operating revenue all operating and administrative expenses including adequate provision for maintenance and depreciation but excluding interest and other charges on debt;

(b) "value of the net fixed assets in operation" shall be the gross value of such assets less the amount of accumulated depreciation shown in the statement of accounts of the Authority:

(3) Provided that, if the amounts shown in such statements of accounts do not reflect a true measure of the value of the assets concerned because of currency revaluations, changes in prices or similar factors, the value of the fixed assets shall be adjusted adequately to reflect such currency revaluations, changes in prices or similar factors.

(4) In the exercise of its duty under subsection (1), the Authority may, subject to any direction of a general nature which may be given to the Board by the CECM responsible for Finance, invest moneys standing to the credit of the Authority in such securities as the Board thinks fit.

#### **41. Capitalisation of the Authority.**

(1) The funds of the Authority shall consist of -

(a) monies allocated and appropriated to the Authority from the County Revenue Fund by the County Assembly in line with the Authority's strategic plan;

(b) any grants, gifts, donations, loans or other endowments given to the Authority;

(c) moneys that may vest in or accrue to the Authority in the course of the exercise or performance of the functions of the Authority under this Act; and

(d) monies from any other lawful source accruing to 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.

#### **42. Expenditure of the Authority.**

- (1) There shall be paid from the funds of the Authority –
  - (a) operational expenses incurred in the administration and operations of the Authority; and
  - (b) monies as are necessary for the functioning of the Board.

### **PART VI - REPORTS AND ACCOUNTS**

#### **43. Annual Accounts and Financial Year**

- (1) The Board shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Authority and shall ensure that within six months of the end of each financial year of the Authority or such longer period as the County Executive Committee Member responsible for Finance may allow in any particular case, a statement of accounts of the Authority is prepared in accordance with international financial reporting standards and transmitted to the Auditor General (Corporations).
- (2) The accounts of the Authority and of all offices of the Authority shall be audited by the Auditor-General (Corporations) and for that purpose the Auditor-General (Corporations) and any person authorized by him in that behalf, whether or not a public officer, shall have access to all books, records, returns and other documents relating to those accounts and upon receipt of a statement of accounts transmitted to him under subsection (1) the Auditor-General (Corporations) shall examine it, certify it and report on it and shall return the statement with his certificate and report to the Board.
- (3) The Board shall, within nine months after the end of each financial year, prepare a report upon the operation of the Authority during that year and shall transmit such report to the Executive Committee Member responsible for Finance who shall cause the same to be presented to the County Assembly together with the statement of accounts and report of the Auditor-General (Corporations) referred to in section 44.

- (4) The financial year of the Authority shall run from the 1st January to the 31st December in each year.

#### **44. Annual Estimates**

- (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority that year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the relevant financial year and, in particular, shall provide for –
- (a) payment of the allowances and other charges in respect of the members of staff of the Authority and the Board;
  - (b) allocation for investments to be established, supported or financed in the year;
  - (c) payment of gratuities and other charges in respect of benefits which are payable to the members of staff of the Authority;
  - (d) training, research and development of activities of the Authority;
  - (e) general development expenditure in the financial year ; and
  - (f) maintenance, repair and replacement of the equipment and other property of the Authority.
  - (g) reserve funds to meet future or contingent liabilities in respect of investment and social development as the Authority may deem appropriate.
- (3) The financial estimates referred to under sub-section (1) and (2) shall -
- (a) differentiate between recurrent and development expenditure; and
  - (b) be in a program-based format.
  - (c) Include a procurement and cash-flow plans
- (4) The annual estimates shall be approved by the Board at least one month before the commencement of the financial year to which they relate and submitted to the Executive Committee Member for tabling in the County Assembly for its approval.
- (5) No expenditure shall be incurred by the Authority except in accordance with the annual estimates approved under subsection (4).
- (6) Upon the approval of the estimates by the County Assembly, all monies appropriated for purposes of the Authority shall be paid into the Authority's account.

### **PART VII - INVESTMENT ADMINISTRATION AND MANAGEMENT**

#### **45. Investment Strategy and Plan**

- (1) Subject to the leave of the Board, the Authority shall prepare and submit to the County Executive Committee Member responsible for Trade for approval a three-year corporate investment strategy and 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.

#### **46. Appraisal and Financial Analysis.**

- (1) 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.

#### **47. Sustainability, Profitability and Competitiveness.**

- (1) The Authority shall establish and maintain such measures as to ensure that its –
  - (a) financial and liquidity ratio 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) sell, dispose of, transfer or liquidate the investment where the investment was being carried out by a company established by the Authority as a sole business.

#### **48. Partnership**

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

#### **49. Investment Certificate**

- (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.

#### **50. Incentives and Licenses Relating to an Investment Certificate**

- (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 VIII - GENERAL PROVISIONS**

#### **51. Regulations.**

- (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.

## **52. Transition Clauses**

- (1) Notwithstanding the repeal of the Local Government Act, Chapter 265 any regulations made under provisions of the repealed Act and anything lawfully done by the Authority under the powers given to it under the repealed Act or under such regulations shall continue to have effect until and unless expressly revoked or nullified by regulations made under this Act.
- (2) The tariff of rates and all directions, orders, rules, authorizations and other things published, made, given or done by the Authority under the Local Government Act, Chapter 265 or any subsidiary legislation thereunder, subsisting at the commencement of this Act, shall on and after that day be deemed to have been published, given, made or done by the Authority under this Act and shall continue to apply until and unless replaced or substituted or varied or otherwise amended by the Authority.